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INDIAN LAND CLAIMS IN ALBERTA:
POLITICS AND POLICY-MAKING (1968-77)

by



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A THESIS

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ABSTRACT

Contemporary Indian land claims in Alberta have posed a number of political problems for the governments of Canada and Alberta, because these land claims conflict with competing demands for energy development and alternative land uses. Moreover, Indian land claims involve a shared sovereignty in Canadian federalism, in that the federal government has constitutional responsibilities for Indians and Indian lands, while the provincial government has constitutional jurisdiction over lands and natural resources. In order to resolve these conflicts and to accommodate this divided yet inter-related sovereignty, the governments of Canada and Alberta have devised policy-making structures and Indian land claims settlement policies. It is the contention of this thesis that the new federal-Indian policy-making structure--The Indian Rights Process--holds the potential for mutually acceptable land claims settlement policies. Whether the claims policy potential inherent in this new joint policy-making structure is realized depends on the key government and Indian leaders. Further, I conclude that the Alberta government has developed negative policies regarding Indian participation in policy-making structures and Indian land claims policies generally.

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CHAPTER 1

INDIAN LAND CLAIMS IN ALBERTA

To us who are Treaty Indians there is nothing more important than our Treaties, our lands and the well-being of our future generation.¹

Introduction

"Indian land claims" are now becoming more a part of the everyday conversation of Canadians, due in part to their relation to energy development projects, and in part to their forceful presentation by Indian spokesmen. However, while land claims are gaining a contemporary significance, the underlying issues of Canadian social policy and of the origins of these claims are little known.

In this chapter, I would like to develop a statement of the problems to be considered in the thesis. Moreover, I will begin the process of categorizing and defining the Alberta Indian land claims and isolating a few key political elements of the current wave of land claims. This will form part of an overall approach to the thesis subject of "Indian Land Claims in Alberta: Politics and Policy-Making (1968-77)."

A. The Contemporary Significance of Indian Land Claims

In the 1970s we have witnessed in Canada increasing conflict between energy development projects and Indian land

claims. These conflicts have, in certain instances, been resolved through negotiated agreements; but in other instances the land claims remain outstanding while the bulldozers have gone ahead. Mr. Justice Thomas Berger juxtaposed this energy development versus land claim showdown in terms of two different perspectives or assumptions that are symbolized in the title of his report--Northern Frontier, Northern Homeland.² Fortunately, Berger was able to see a way out of this energy-land claim impasse through his recommendation of a ten year moratorium on the MacKenzie Valley pipeline, in order to have an Indian land claims settlement implemented.³

Elsewhere, Indians have not had the benefit of a specific Commission of Inquiry for their particular claims, although the government of Canada did appoint the Indian Claims Commission of Canada in 1969. Nevertheless, negotiated, compromise agreements have been reached to settle land claims. "The James Bay and Northern Quebec Agreement" would be an example.⁴ Similarly, as a partial payoff from an Indian land claim, the Indian Association of Alberta negotiated specific economic development and training rights from Syncrude Canada Ltd. and the federal government.

The energy crisis of the 1970s, as Donald Smiley points out, has catapulted us into a new situation with a host of related issues:

In general terms, the energy crisis has directly or indirectly joined a group of crucial issues in public policy, federal-provincial relations and the most fundamental aspects of national life: foreign ownership; the

rights of native people; the protection and control of the natural environment and private enterprise in the economy; interprovincial fiscal equalization and other attempts to reduce regional disparities; patterns of production and consumption based on cheap and what Canadians have believed to be inexhaustible resources of energy.⁵

Indian land rights and claims are certainly not the only "crucial issue" on the current agenda of Canadian governments, however, the fact that Indian land claims are an issue for many Canadians is a new historical fact. Indians are becoming less and less the forgotten people of Canadian history. For many Indians, these land claims are vital to their future, for it is upon this land base that the other economic, political and social institutions must be built. Moreover, for most Indians, the land forms a special, unique part of their religious traditions.

Berger has suggested that the current aboriginal land rights settlement may enable us to strike a new beginning of relationships with Canada's native people.⁶ Indeed, there is evidence that these modern day land claims settlements may be measured against the treaties of the 1870s and the older Indian treaties subsequently updated or equalized.⁷ To put this issue in other terms, modern land claims settlements allow for a reworked and revised social policy for the economically disadvantaged Indian people of Canada. Hence, the importance of the negotiations for all sides. A part and parcel of these settlements and a revised Indian policy is the controversial matter of a special status for Indians

and their lands in Confederation. Thus Indian people are joining other sectors of our society, who are also demanding a new appreciation of their rights and traditions. Therefore, the issue of land rights of a minority group in Canada must, by its very nature, be reconciled and resolved in the competitive political arena.

B. Indian Land Claims in Alberta--
A Statement of the Problems

Indian land claims have raised a host of problems for modern Canadian society. Firstly, there is a problem of understanding the historical roots of Indian land claims, because all of these contemporary claims find their basis in historical government-Indian relations. In this first chapter, I will precisely define this problem of the historical legacy of Indian land claims.

Secondly, Indian land claims raise problems of the political context. How are Indian land claims related to the Indian policies and policy-making of the present federal government? Is Trudeau willing to share governmental power with Indian leaders in order to develop mutually acceptable policies? Further, in what way are Indian land claims also a federal-provincial problem? What are the relevant policies of the Alberta government? These questions of political context are examined in depth in chapters two, three and four.

Thirdly, Indian land claims also can be viewed in a

socio-economic context. Do Indian land claims always raise conflict-of-interest problems with energy development projects? In chapter five, I will examine this question in relation to Syncrude Canada Ltd. in Northeastern Alberta. Further, can Indian land claims settlements be viewed as social policy over and above the legal obligations of the governments of Canada and Alberta? This last question will be examined in the final chapter.

By addressing and examining these problems evoked by Indian land claims, particularly those in Alberta, I believe that I will have covered the major relevant areas of politics and policy-making from 1968-77.

All of these questions can be boiled down to the key problems of structures and settlements. By structure, I am referring to the modern structures of Indian policy-making. Can Indian representatives participate in policy decision structures related to land claims at both federal and provincial levels of government? By settlement, I am referring to land claims settlements of both governments, i.e., the governmental policy outputs in terms of land and/or economic benefits. Have Indian land claims in Alberta produced tangible, concrete results for the claimants? These two key problems of structures and settlements are related, and the precise nature of the contemporary relationships will be examined vis-a-vis Canada, Alberta and the Indian Association of Alberta.

C. Alberta Indian Land Claims
--Definitions and Focus

I will now briefly consider the specific factors that influence the politics of Alberta Indian land claims. As Richard Simeon has recently pointed out ". . . the most important question to ask in the study of policy is Lasswell's political question: who gets what, when and how?"⁸ The political questions will also include an examination of why certain policy decisions were taken and not others.

By narrowing the study to Alberta Indian land claims, I am focusing on four and sometimes five direct participants, and therefore this study will be precise and focused. Since claims are normally advanced by an Indian band or groups of bands, they represent one key political participant. Often Indian bands or communities request that the Indian Association of Alberta assist them in their land claims negotiations, and the IAA therefore represents a second political participant for many, but not all, Indian land claims. By virtue of jurisdiction for "Indians and lands reserved for Indians" under section 91(24) of the BNA Act, the federal government is the third political actor. The fourth participant is the government of Alberta, which was given specific responsibilities regarding the allotment of future Indian reserve lands by virtue of clause 10 of the 1930 federal-provincial Natural Resource Transfer Agreement. Private sector participants holding an interest in certain land claims by Indians represent a fifth party that is often involved.

The subject of "Indian land claims" can be usefully

defined by examining each word individually. By "Indian," we are here referring to Indian "bands" which are defined in the federal Indian Act as:

- "bands" means body of Indians
- (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September 1951,
 - (b) for whose use and benefit in common, moneys are held by Her Majesty, or
 - (c) declared by the Governor in Council to be a band for the purposes of this Act;⁹

We find the following definitions of "claimant," "claims," and "land" in a modern Canadian dictionary:

Claimant n. One who makes a claim.

Claim v.t. 1. To demand on the ground of right; affirm to be one's due; assert ownership or title to.
2: To hold to be true against implied denial or doubt; maintain, assert.

Land n. 5. Law a. Any tract or ground whatever that may be owned as goods together with all its appurtenances, as water, forest, buildings etc.
b. A share or interests in land, tenements, or any hereditament, both corporeal or incorporeal.¹⁰

To summarize these definitions, and amalgamate them with our concerns, I am referring to Indian band claimants, who are demanding legal title to certain lands in the province of Alberta.

The specific time period from 1968-77 was chosen to examine land claims policy processes, primarily on the basis of the tenure of the leaders of the respective political participants. In 1968, both Pierre E. Trudeau and Harold Cardinal began their careers as Prime Minister of Canada and

President of the Indian Association of Alberta respectively. Both men brought new perspectives on Indian policy-making generally and Indian land claims specifically. Similarly, the post 1971 government of Peter Lougheed in Alberta ushered in new policy directions, including Indian land claims policy. By spring 1977, Cardinal had left his political position and taken a job as a civil servant. With Cardinal's departure and the appointment of a new federal Minister responsible for Indian Affairs, the constellation of key political actors changed, and correspondingly the politics of Alberta Indian land claims were bound to be somewhat different. In any event, enough changes in policy-making and land claim policies had taken place in that short period of history for an evaluation of the period to be justified.

The "how" of policy development and formulation took place within the context of certain institutions and structures. These institutions and structures were generally in a state of flux and change in this period. Moreover, new structures were devised--the "Indian Rights Process"--to overcome some of the past difficulties of adversary relationships and acrimonious dialogue. Other structures, such as the "Tripartite Committee" (Canada-Alberta-IAA), appeared to be barely operative and in need of overhaul.

Therefore, if we are to come to grips with the politics and policy-making process of Alberta Indian land claims, these critical factors--the key political

participants, the issue of Indian land claims, the 1968-77 time span, and the evolving institutions and structures-- must be analyzed, weighed and linked with one another.

D. Categories, Origins and Examples
of Alberta Indian Land Claims

The land claims in Alberta normally fall into one of three basic categories:

- (a) aboriginal rights land claims based on unextinguished Indian use and occupancy;
- (b) land entitlement claims based on the treaty formula of one square mile per family of five; and
- (c) reserve land surrender claims based on improper or illegal reserve surrenders.

Land claims are normally presented first to the federal and then to the provincial government. Once the federal government recognizes or validates the legitimacy of a land entitlement claim, for example, then it is referred to simply as a land entitlement. Similarly, once the provincial government recognizes the validity of a particular land entitlement claim, it then ceases to be a claim and become an entitlement. The political process of validating claims will be our principal concern, rather than the implementation of the land entitlement through the land selection and reserve survey administrative process. It should be noted that the land entitlement policies based on the Indian treaties have been clearly established by both levels of

government, whereas the aboriginal rights claims in Alberta are still suspect due to the existence of treaties 6, 7 and 8. At present, neither government has any clearly established policy to deal with reserve land surrender claims.

In this current round of Indian land claims, an up-to-date listing of the several land claims that have been presented to government(s) is possible by utilizing our categories, namely:

1. aboriginal rights claims--isolated communities of Northern Alberta (north of Lesser Slave Lake);
2. land entitlement claims--Fort Chipewyan Cree band, Bighorn Stoneys, Alexis band, Blood band, and the Tall Cree band;
3. reserve land surrender claims--Enoch band and Peigan band.

More claims are expected once more Indian-controlled research had been completed. I plan to examine in detail the progress of the following land claims: Isolated communities, Fort Chipewyan Cree Band and the Bighorn Stoneys. These claims are particularly interesting, because they are the only ones that have moved along far enough to involve the government of Alberta. Moreover, each of these communities or bands have requested the assistance of the Indian Association of Alberta in negotiating their land claim. In our deeper examination of the various categories of claims in this chapter, I will refer to these three specific claims. In

addition, these claims will be examined in later chapters to concretely illustrate the Indian land claims policy and settlement process.

Category #1--aboriginal rights claims--have been at the root of all Indian claims in Canada. Once these aboriginal rights were considered to be fairly extinguished, Indians had to rely on treaty land rights or other reservation land grants from the Crown. The origins of British and later Canadian aboriginal land rights go back to the Royal Proclamation of 1763, which has been described by Indians as their "Magna Charta." One of the leading Canadian authorities on aboriginal rights, Doug Sanders of the University of Victoria Law Faculty, has described the historical background and importance of the Royal Proclamation as follows:

In the late 18th century the framework of Indian-White relations changed. There was organized Indian opposition to colonial expansion which came to a head with the seige of the fort at Detroit in 1763 by Chief Pontiac and his allies. To deal with this situation, the Imperial Government enacted the Royal Proclamation of 1763. By the Proclamation, colonial settlement on the frontier was to be temporarily ended and a vast area frozen in Indian occupancy.

Settlers were to be diverted from the western frontier into Nova Scotia and Quebec. Private land dealings between whites and Indians had led to frauds and abuses and Indian unrest. Private dealings were prohibited. Land acquisition from Indians was declared to be a Crown monopoly. The proclamation set forth a procedure for the Crown to follow in entering into treaties with the Indian tribes for the acquisition of land.

. . . The Crown monopoly on the acquisition of Indian land and the treaty procedure became basic principles in the colonial legal system.

. . . The Royal Proclamation was an important watershed.¹¹

When reference is made to areas of Indian occupancy, the Royal Proclamation specifically describes these areas as Indian "hunting grounds":

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded or purchased by Us, are reserved to them or any of them, as their Hunting Grounds.¹²

The treaty procedure described in the proclamation is as follows:

. . . if at any time any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only by Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; . . .¹³

In the period between 1763 and the Canadian Confederation of 1867, the British government subsequently entered into many treaty agreements with the Indians of southern Ontario.¹⁴ The Indian treaties purported to legally extinguish Indian aboriginal rights to the soil.

At Confederation, "Indians and lands reserved for Indians" (Section 91, 24 BNA Act) became the responsibility of the central government, apparently because there was concern over the possible mistreatment that local legislatures might accord the Indian peoples.

Section 146 of the BNA Act provided for the admittance of new territories to the Dominion, and when Ruperts Land and the Northwest Territory were added in 1869-70, Her Majesty

Queen Victoria was assured by a joint Senate and House of Commons address that:

. . . upon the transference of the territories in question to the Canadian government, the claims of the Indian tribes to compensation for lands required for the purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealing with the aborigines.¹⁵

Therefore, the treaty-making process to extinguish aboriginal rights was confirmed by the Canadian government and in the 1870s the government began to negotiate treaties with the Indians of the prairies and the needed portions of north-western Ontario.

The only aboriginal rights claim in Alberta, at the present time, is that of the Isolated Communities of northern Alberta (Trout Lake, Peerless Lake, Chipewyan Lakes, Sandy Lake and Loon Lake). The Chiefs and headmen of these communities were forgotten or omitted when the federal government negotiated treaty 8 in 1899, because the government treaty expedition in northern Alberta primarily followed the Peace and Athabasca Rivers and did not venture into the interior hinterland. A government commissioner, J. A. Macrae wrote in 1900:

There yet remains a number of persons leading an Indian life in the country north of Lesser Slave Lake, who have not accepted treaty as Indians, or scrip as half-breeds, but this is not so much through indisposition to do so as because they live at points distant from those visited, and are not yet pressed by want.¹⁶

These interior communities have not signed an adhesion to treaty 8 subsequent to 1899, although they may now be

disposed to do so following the failure of their caveat action due to retroactive provincial legislation. This claim will be discussed in chapters five and six.

Now we can turn to the second category of claim-- treaty land entitlement. The treaty-making process or procedure was, in effect, a negotiating process between the official representatives of the Canadian government and the Indian chiefs of the tribes occupying various areas. It is because of their involvement in the treaty-making process that the prairie Indians today, for the most part, regard the Indian treaties as their treaties and view the Indian Act as a creation of the government, which it was. Indeed, John Taylor, a historian who has completed a Ph.D dissertation on treaties 1-7 in the decade of the 1870s, has concluded that most of the wise, benevolent and far-reaching suggestions that were to form the social policy basis of the treaties stemmed primarily from Indian initiative.¹⁷ The appreciation of the important role of Indians in the treaty negotiations forms part of an increasing body of evidence compiled by contemporary historians, who are concerned to examine both positive and negative sides of the Indian's historical experience.¹⁸ When historians previously proceeded with a negative image or assumptions of Indians, these treaties were viewed either as government ultimatums or the federal government was accorded all the wisdom and benevolence for the treaty terms.¹⁹

From a strictly legal point of view, the Indians were

being asked to surrender their Indian title or aboriginal rights in return for treaty land rights and other benefits. Sanders contrasts these new western treaties with the earlier southern Ontario treaties, which were simple land conveyance documents permitting Indians to retain certain reserves of land for their own purposes. Note, for example, the following passage:

The federal treaties, which began in 1871 with the signing of Treaties Number 1 and Number 2 in southern Manitoba, were a further evolution in the character of Canadian Indian treaties. By these documents the tribes completely surrendered their traditional tribal territories and the Crown promised to establish reserves. Legal continuity of Indian occupancy of reserve lands was broken by the treaty. Reserves were to be established on the formula of one square mile per family of five. The annuities were individual perpetual annuities. For the first time the treaties contained policy promises: a school on each reserve, a ban on liquor on the reserve, farm equipment and animals for the new agricultural life that was supposed to lie ahead.²⁰

Sander's legal opinion of the treaties is that they are "contracts." Whether there was a "meeting of the minds" necessary for a valid contract, especially over the concept of land and land surrenders, remains a very debatable issue. Euro-Canadian and Indian perspectives on land were quite different at that time, and research has shown that both sides are still far apart on their interpretations of these treaties.²¹ To date, however, no land claims in Alberta have been launched challenging the basis of treaties 6, 7 and 8. In the present Northwest Territories, on the other hand, Indians maintain that their treaties 8 and 11 were simply "peace treaties" and land was not discussed (see Appendix 2 for a map showing these various treaty areas). Treaties 6, 7 and 8 all have

clauses relating to the treaty formula of one square mile per family of five although treaty 8 also does allow for individual family reserves. For example, in treaty 6 we find the clause:

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farm lands, due respect being had to lands at present cultivated by said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada, provided all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in the manner following, that is to say:

That the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable to them;²²

Treaty land entitlement claims in the 1970s have normally come about as the result of one of the following factors:

(a) the band chose for some years following the treaty not to take a reserve and consequently have an outstanding entitlement; (b) when the reserve was surveyed, the band was short-changed the full amount of their entitlement normally because of governmental oversight or error; and (c) Indians who had not received their land entitlement joined the band after the reserve had been surveyed.

In the case of the Fort Chipewyan Cree and Chipewyan bands, they had decided at the time of Treaty 8 signing in 1899 not to take a reserve so that they would be free to hunt and trap over a large area. However, by 1922 the increased hunting and trapping pressure of non-Indians in the area

forced both the bands to apply for a reserve around Lake Claire and Lake Maima (southwest of Ft. Chipewyan).²³ Other developments took place, however, which made the request impossible to fulfill. Wood Buffalo Park, which had been set aside as a National Park in 1922 involving some 10,500 square miles north of the Peace River, was extended southward in 1926 encompassing another 6800 square miles, including the land requested by the Ft. Chipewyan bands.²⁴ While the Chipewyan Band was granted a reserve in 1937, the Cree Band request has remained outstanding, partly because of their continuing and difficult request for lands within the National Park and partly due to governmental delays. At the present time, both the federal and provincial governments have agreed that there is land entitlement owing to the Cree Band. However, the federal government and the band believe that the Dec. 31, 1972 population is the relevant one for treaty formula land entitlement calculations; whereas the province maintains that the treaty time population (i.e., 1899) is the relevant population figure.²⁵ The process of resolving the Ft. Chipewyan Cree Band claim will be developed in Chapter six.

Similarly, the Bighorn Stonies, part of the Wesley band at Morley, have had an outstanding treaty land entitlement, because they have also been a somewhat forgotten group. This group of hunting Indians have petitioned the Department of Indian Affairs since 1898 for their own reserve.²⁶ In

1947, a special reserve (144A) of roughly 5000 acres was set aside for them, but the provincial government imposed certain limitations on the reserve, especially the fact that the land was leased not transferred to the federal Crown.²⁷ Following the flooding of the area through Calgary Power's Bighorn Dam, the Stoney Band completed an extensive research report.²⁸ This report was presented to Jean Chretien, Minister of the Department of Indian Affairs and Northern Development, and eventually a federal-Indian land entitlement agreement was reached. In his letter to Chief John Snow, Chretien states the mutually agreed upon position:

. . . the Stonies living on the Kootenay Plains should have been considered a separate group from the start. Accordingly, I am prepared to approach the Province on behalf of the Wesley Indians living in the Kootenay Plains/Bighorn area, on the basis that this group has never received land pursuant to Treaty.²⁹

As we shall see in Chapter four, the government of Alberta was not prepared to go along with this federal-Indian agreement and referred this land claim to the courts in the form of a constitutional reference.

The third and final category of Alberta Indian land claims are the Indian reserve land surrenders. Treaty 6, for example specified that:

. . . the aforesaid reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitlement thereto, with their consent first had and obtained;³⁰

In Alberta, there were following the treaties some 1,900,000

acres set aside as Indian reserve land. Of that total amount some 335,000 acres were later surrendered by various Alberta Indian bands to the Federal government, and the government in turn sold the land to non-Indians.³¹

The legal provisions for Indian reserve land surrenders were set down in the Indian Act. The over-riding political and economic factors, however, usually were the dominant considerations in these land surrenders. In the period following the treaty signing on the prairies, Indians were faced with a difficult time. With the buffalo gone from the Canadian prairies by 1879, they had to find other sources of game, and to rely on rations from the Indian agent and the economic development promises in the treaties. The farming provisions of the treaties were unfortunately implemented only very slowly and the provisions themselves were inadequate to provide for the transition and a new method of Indian self-support.³² Hence, some of the Indian reserve lands were unused for agriculture, and as more and more of the land surrounding reserves was taken up for farming, non-Indian pressure mounted to have Indians surrender some of their best farm land. While the western reserve land surrender period stretched from roughly 1880-1930, most of the Alberta surrenders occurred in the time of Frank Oliver, an Edmonton Liberal politician who was the federal Minister of the Interior from 1905-1911. It should be noted initially that the portfolio of Interior also included the Department

of Indian Affairs, so that there was a built-in conflict for the Minister between opening up the western fertile belt to immigrant settlement and the protection of Indian land rights. In the period from 1906-1910, the following bands surrendered some of their land: Michel's, Enoch, Alexander's, Peigan Paul's, Bobtail, Louis Bull, Samson, and Blackfoot. Both the Enoch and Peigan surrenders are now the subject of current litigation, after their negotiations with the federal government had floundered.

As previously mentioned, the Indian Act contained strict legal provisions for the taking of surrenders with the key clause being:

- 49 Except as in this Part otherwise provided, no release or surrender of a reserve held for the use of Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such council, by the Governor in Council or Superintendent General.³³

The governmental practice and the underlying motives of all parties were, however, the dominant factors. Bennett McCardle, a researcher who has intensively studied the Alberta land surrenders, describes the period under Oliver:

. . . The Indians interest in land was often sacrificed to what was considered the more important "public interest." Frank Oliver saw Indian land, not as something to be preserved for future Indian use, but as something to be developed here and now--if not by Indians then by "better men." . . .

. . . the Liberal administration in Oliver's time, (which took the greatest number of surrenders ever given in Alberta) saw surrenders as "simple cash transactions." If the Indian could be persuaded to sell, DIA would do its best to have them do so. It used business methods: taking requests from interested buyers, sending out agents (sometimes specially hired for their talents) to win over the Band, offering the most attractive terms the law allowed, and then taking a vote. Often those who did not listen to the agent's persuasion, and who did not come to the meeting to vote on the surrender, found they were forced to agree on the meeting's decision.

But the difference between the government and any other land business was that the government held power over the owners of the land. In some surrenders there is evidence of the use of undue influence--such as the withholding of rations or farm assistance, or of money legally due to the Board (sic) from its own funds; offers of official positions, employment or money; and even threats of force . . .³⁴

It should also be pointed out that within bands themselves various factions developed. Some band members favored surrenders so that, for example, farm machinery could be purchased. Others wished to have the large per capita payments that were made possible by the 1906 Indian Act amendments. Others were against the surrenders and wished to keep the land for future generations. Within the surrounding white community, other motives were crucial--some were intent on land speculation and others were anxious to get the land and begin farming.

In any event, this third category of land claims--reserve land surrenders--raises profound ethical as well as legal issues. As one federal official put it--"The surrenders may have been legal but they were often immoral."³⁵ To date, the federal government has not developed a policy on these questions. These issues require further government and

Indian policy development and the "Indian Rights Process" described in Chapters three and six has been developed to assist in this policy formulation.

E. A Thematic Approach to "Indian Land Claims in Alberta: Politics and Policy-Making (1968-77)"

The best overall approach to the subject of "Indian Land Claims in Alberta: Politics and Policy-Making, 1968-77" is through an examination of several, inter-related key themes. These themes are the crucial themes of the Alberta Indian land claims process, and are vital to an understanding of why certain events and policies have come to pass in this contemporary period.

The various chapter headings provide some clues as to the underlying themes.

1. Indian Land Claims in Alberta
2. Government-Indian Relations Part I: Politics and Policy-Making 1968-77
3. Government-Indian Relations Part II: the "Indian Rights Process" 1974-77.
4. Federal-Provincial Relations and Indian Land Claims: The Alberta Situation
5. Land Claims versus Development?--The Impact of the Indian Land Claims Caveat Action on the Tar Sands Development Policies of Syncrude Canada Ltd. and the Governments of Alberta and Canada
6. The Future of Alberta Indian Land Claims

The interconnected themes will each be intensively examined

from a political science perspective--but drawing as well on the disciplines of law, history, and anthropology. I will attempt to develop the themes in such a way that the analytical perspectives will be related to empirical material throughout the entire text. In my view, this approach allows for the creative emergence of analysis and theory, and is therefore preferable to heavy doses of theory at the beginning and end of a manuscript as is sometimes the practice.

In order to further introduce this thesis, I would like to explain my research methods and related personal experience. Firstly, in my research I have relied heavily on primary documentary sources and/or interviews with participants. By primary sources, I am referring to such sources as: the correspondence files of the Department of Indian Affairs; Hansard; The Report of the Standing Committee on Indian Affairs and Northern Development; and various newspaper reports. In addition, I conducted extensive personal interviews with various officials of both levels of government and the respective Indian organizations (see Appendix 1 for an example of the letter sent requesting an interview). In all instances, I attempted to corroborate the information received by utilizing more than one source. In certain cases, this has meant a combination of documentary and oral evidence, and in other cases, the information from several interviewees was cross-checked. Secondary literature has also been utilized, but this particular subject area is still

relatively new, and therefore I have emphasized primary sources.

I was also a participant-observer in part of these land claims processes. Here I am referring to my work with the Indian Association of Alberta (IAA) from 1972 through to 1976, first as a researcher, and latterly as Research Director for the IAA's Treaty and Aboriginal Rights Research group. I should, however, also point out that this past academic year as an M.A. student in political science has allowed me a degree of detachment from the day-to-day land claim issues seen from the Indian side, so hopefully this thesis will do justice to the various positions of the respective, direct participants.

Concluding Note

In this chapter, I have attempted simply to open up the issues and factors related to Alberta Indian land claims and to suggest some ways of handling this complex matter. In the chapters which follow, I will move beyond definitions and categories into an analysis of the contemporary political process, which is aimed at resolving Indian land claims.

FOOTNOTES--CHAPTER 1

¹Indian Chiefs of Alberta, Citizens Plus (Edmonton, Indian Association of Alberta, 1970), p. I

²Mr. Justice Thomas Berger, Northern Frontier, Northern Homeland--The Report of the MacKenzie Valley Pipeline Inquiry: Volume One (Ottawa, Ministry of Supply and Services Canada, 1977), p. vii f.

³Ibid., p. xxiv, xxv.

⁴The James Bay and Northern Quebec Agreement (Ottawa, Indian and Northern Affairs, 1976).

⁵Donald Smiley, Canada in Question: Federalism in the Seventies (Toronto, McGraw-Hill Ryerson, 1976), p. 188.

⁶Berger, op. cit., p. 200.

⁷Memorandum to Cabinet, Indian and Eskimo Claims Policy, April 10, 1973, p. 10.

⁸Richard Simeon, "Studying Public Policy," Canadian Journal of Political Science, ix:4, December 1976, p. 550.

⁹The Indian Act, Revised Statutes, Chapter 149, Section 2.

¹⁰Funk and Wagnall's Standard College Dictionary, Canadian Edition (Toronto, Fitzhenry & Whiteside Limited, 1976), pp. 250 & 759.

¹¹Douglas Sanders, "Native Claims in Canada: A Review of Law and Policy," paper given to the Alberta Bar Association, February 1975, Mimeo, pp. 3-4.

¹²Revised Statutes of Canada, 1970, Appendices, at pp. 127-29, cited also in P. A. Cumming and N. H. Mickenberg, editors, Native Rights in Canada, second edition (Toronto, The Indian-Eskimo Association of Canada in association with General Publishing Co. Ltd., 1972), p. 285.

¹³Cumming and Mickenberg, op. cit., p. 285.

¹⁴Canada, Indian Treaties and Surrenders From 1680-1902, Volumes 1, 2, 3 (Ottawa, King's Printer, 1912), reprinted by Coles Publishing Company, Toronto, 1971.

¹⁵"Order of Her Majesty in Council Admitting Rupert's Land and the North-western Territory into the Union," Schedule A, reprinted in Maurice Ollivier, British North America Acts and Selected Statutes (1867-1962) (Ottawa, Queen's Printer, 1962), p. 162.

¹⁶Report of Commissioner for Treaty 8, Department of Indian Affairs, Ottawa, Dec. 11, 1900; see Treaty No. 8 (IAND Publication No. Q5-0576-000-EE-A-16), p. 21.

¹⁷John L. Taylor, "Canada's North-West Indian Policy in the 1870's--Traditional Premises and Necessary Innovations," a paper prepared for the National Museum of Man Symposium on Approaches to Native History in Canada, October 1975, p. 8; see also John L. Taylor, "The Development of an Indian Policy for the Canadian North-West 1867-79," Ph.D. dissertation, Queen's University, 1976

¹⁸For reference on this point see Arthur Ray, "Why Study the Fur Trade?" A paper given at the Western Canadian Society Conference, Calgary, February 1977.

¹⁹See for example G. F. Stanley, The Birth of Western Canada (Toronto, Longmans, Green and Co. Ltd., 1936) Chapter X, reprinted by University of Toronto Press, Toronto, 1961.

²⁰Sanders, op. cit., p. 8.

²¹Richard Price, editor, "New Perspectives on the Alberta Treaties" (Edmonton, Indian Association of Alberta, 1976), unpublished manuscript.

²²The Treaties of Fort Carlton and Pitt, Number Six, cited in Alexander Morris, The Treaties of Canada with the Indians (Toronto, Bedfords, Clarke & Co., Publishers, 1880), pp. 352-353, reprinted by Coles Publishing, Toronto, 1971.

²³Public Archives of Canada, R. G. 10 Black Series, file 779/28-3, Vol. 2, correspondence of Indian Agent Card to Ottawa re. request of bands for reserve lands.

²⁴Richard Price, "Revised Interim Report re. Ft. Chipewyan Cree Band Requests for Reserve Land" (unpublished research report for the Indian Association of Alberta and the Cree Band), February 1975, p. 1.

²⁵The Dec. 31, 1972 population figure was a negotiated population base between the federal government and the Indians. The new position of Alberta was outlined in a letter, dated April 27, 1977, from Lou Hyndman, Minister of Federal and Intergovernmental Affairs for Alberta, to Warren Allmand, federal Minister of Indian Affairs and Northern Development.

²⁶Public Archives of Canada, R. G. 10 Black, file 339151, memorandum of Indian Commissioner D. Laird to Mr. Pedley, June 23, 1909, p. 4.

²⁷Public Archives of Canada, R. G. 10 Black Series, Vol. 8476, file No. 1/24-2-1. Vol. 1, Dec. 5, 1951 memorandum from D. J. Allan, Superintendent of Reserves and Trusts to Col. E. Acland, DIA re. Stony Reserve at Bighorn.

²⁸Ian Getty, John Larner, researchers and John Snow, editor, "The Kootenay Plains and Bighorn Wesley Stoney Band--An Oral and Documentary Historical Study, 1800-1970," unpublished report, Stoney Tribal Administration, 1972.

²⁹Letter of Jean Chretien to Chief John Snow, January 29, 1974.

³⁰Morris, op. cit., p. 353.

³¹The total reserve land figure includes all land having Indian "reserve status" up to 1975 and includes some land purchased by Bands or the government but having reserve status. These figures were obtained from the Indian Land Registry, Reserve General Register (DIAND, Lands Branch Ottawa) and are cited in an Indian Land Surrender paper of Bennett McCardle for the Indian Association of Alberta.

³²Roland Wright, "The Implementation of Treaty 6 1876-1911, The Search for An Economic Base (Outline for discussion) (1976, mimeo, IAA, unpublished research paper), p. 70.

³³Indian Act., C. 43, 1906, section 49.

³⁴Bennett McCardle, "Indian Land Surrenders," December 1976, unpublished IAA internal document, p. 5.

³⁵Interview, June 13, 1977, Ottawa (Confidential source).

CHAPTER 2

GOVERNMENT-INDIAN RELATIONS (PART I):

POLITICS AND POLICY-MAKING (1968-77)

Introduction

A systematic understanding of contemporary Indian land claims requires that they be placed within their political context. This political context includes:

- (a) the post-war political environment in Canada vis-a-vis Indian matters;
- (b) the link between Indian policy and Indian land claims, in that Indian lands questions are central to Indian policy;
- (c) the particular constellation of political actors, structures for dialogue, and issues in the Trudeau era.

This vital political context for Indian claims will be the central concern of this chapter and the next. I will examine the changing overall nature of the government-Indian relationship, in that the quality of this relationship is a basic factor for most Indian land claims. If the relationship is characterized by acrimony, suspicion and mistrust on both sides, or even on one side, then little dialogue is possible. Conversely, if a measure of trust is part of the government-Indian relationship, then a good share of the

context of meaningful discussion is already there. On the Indian side, land claims represent a long festering grievance with the government and must be resolved before relations with government can be normalized. In the Trudeau era we observe the slow evolution of relationships from initial bitterness and suspicion to a measure of trust. To describe this evolution in another way, we can detect a change from unilateral policy-making by government to a process of joint policy-making by government and Indian representatives.

Changes are also observable in the role of the Department of Indian Affairs, as many of its programs go through a process of devolution to the Indian bands with the department acting in more of an advisory capacity. Similarly the Indian organizations undergo dramatic changes in this period, increasing their political sophistication and effectiveness. All of these aspects are part of an overview of the changing nature of government-Indian relations, and this vital political context is a backdrop for all the negotiations of specific Alberta Indian land claims.

A. The Developing Political Context
for Indian Matters in Canada
after World War II

One of the most important features of post World War II developments was the emergence of a political context for the administration of Indian Affairs. Alan Cairns, writing for the Hawthorne Commission in 1966, describes this political development:

The apolitical context of Indian administration and the general absence of widespread public concern for Indians which had almost become national characteristics

were rudely shattered by the post-war hearings of the Senate and the House of Commons on the Indian Act. The hearings played a major role in stimulating parliamentary interest in Indians. Up until that time the estimates of the Indian Affairs Branch often went through the House of Commons without comment or criticism because of the ignorance and lack of interest of most members. Since those post-war hearings, and stimulated by the extension of the franchise to Indians in 1960 and the second set of Senate-Commons hearings in 1959-61, there has been a desirable increase in parliamentary scrutiny of Indian policies.

The growth in parliamentary and public interest in Indian administration has often resulted in unfair criticisms of the Indian Affairs Branch, and therefore has been partially resented by its personnel. Nevertheless, the emergence of a political context to Indian administration has undoubtedly had a most beneficial impact in contributing to the proliferation of progressive policies which have been implemented by the Branch.¹

For Cairns, this new political situation can be juxtaposed to the earlier context for Indian administration.

The political context of Indian administration historically has been noteworthy in the extent to which Indians have had little influence on the formation of policy affecting their lives; and the extent to which government elites, both political and administrative, have been relatively unhindered in the determination of Indian policy.²

However, as we have seen in chapter one, this generalization of Indian administration requires some qualification. For the prairie Indians did have a significant impact on government policy through their contributions to educational, agricultural and health provisions of the treaties. The Cairn's statement is therefore more applicable to the post-treaty period, especially the formulation of the Indian Act and other government policies in that period.

In his article "Protection, Civilization, and Assimilation: An Outline History of Canadian Indian Policy," historian John Tobias suggests the following impetus and

thrust for post-war public concern regarding Indians:

. . . apparent aimlessness changed after 1945, when public interest in Indian Affairs was awakened to an unprecedented degree. This interest was due largely to the strong Indian contribution to the war effort in the years 1940-45. The public was generally concerned with what was regarded as the treatment of the Indian as a second class person and with the fact that the Indian did not have the same status as other Canadians--in fact, the Indian was not even a citizen. Veterans organizations, churches, and citizens groups across the country called for a Royal Commission to investigate the administration of Indian affairs and the conditions prevailing on Indian reserves. All wanted a complete revision of the Indian Act and an end to discrimination against the Indian.³

The result of this public interest was a Special Joint Committee of the Senate and the House of Commons to examine and consider the Indian Act. This joint committee met from 1946 through 1948 and heard representation from a number of public organizations. Significantly, Indian bands and organizations were also invited to make representations to the joint committee, and they did so.⁴

Indeed, Indian organizations increasingly sought to influence Indian public policy, and the many Indian submissions to the Joint Committee attest to this fact. For example, by 1944, the Indian Association of Alberta (IAA) was organized on a province-wide basis and was assisted by a Calgary school-teacher, John Laurie, in their public efforts to change government policy.⁵ At that time the IAA political pressure consisted of: a "Memorial on Indian Affairs," which summarized the IAA annual meeting resolutions and was mailed to all Senators, Members of Parliament, the media and various

clubs; and the enlisting of the support of Douglas Harkness P.C. Member of Parliament for Calgary.⁶

The administration of Indian Affairs was under the Minister of Citizenship and Immigration, Mr. Harris, when the 1951 amendments to the Indian Act were introduced (see Appendix 3 for a historical overview of the departmental changes for Indian affairs administration). The final legislation incorporated many of the changes recommended by the Joint Committee in 1948.⁷ In one of his speeches to Parliament, Harris juxtaposed the goal of earlier administrations for the protection of the Indian to the present concerns for ". . . the integration of Indians into the general life and economy of the country."⁸ A cautious, guarded movement was made in the direction of Indian self-government and this is evidenced by the following comment by the Minister:

The problem is to maintain the balance of administration of the Indian Act in such a way as to give self determination and self government, as the circumstances may warrant, to all Indians in Canada, but that in the meantime we should have the legislative authority to afford any necessary protection and assistance.⁹

The new Act still left enormous discretionary power with the Cabinet as evidenced by section 4(2):

The Governor in Council may by proclamation declare that this Act or any portion thereof, except Sections 37 to 41, shall not apply to:

- (a) Any Indians or any group or band of Indians, or
- (b) Any Reserve or any surrendered lands or any part thereof, and may by proclamation revoke any such declaration.¹⁰

The Minister had held a special five day conference between Feb. 28 and March 3, 1951 for consultations with 19

Indian organizations. However, the dye had been cast, and the government proceeded as it saw fit, without taking the consultations with Indians too seriously.¹¹

As this juncture, it is perhaps important to take a reading on the Harris administration's view of Indian claims. The joint Committee had recommended that:

. . . a Commission in the nature of a claims Commission be set up with the least possible delay, to inquire into the terms of all Indian treaties in order to discover and determine, definitely and finally, such rights and obligations as are therein involved and, further to assess and settle finally and in a just and equitable manner all claims or grievances which have arisen thereunder.¹²

According to a long-time official of the Department of Indian Affairs, Harris believed that if such rights existed, they should be litigated.¹³ Hence, the recommendation of a Claims Commission on outstanding claims and grievances was dropped by the government. Any Indian claims that did exist would be handled internally in an administrative way by the Department of Indian Affairs, or, if satisfaction was not obtained, then the courts were the only other option.

Another basic aspect of the political context of Indian affairs is the unique situation of Indian people in Confederation. Under section 91(24) of the BNA Act, the federal government assumed jurisdiction for "Indians and lands reserved for Indians." With the establishment of Indian reservations under federal jurisdiction and the post-Confederation Indian administration, Indians were effectively living in a unitary state. All Indian services, whether

education, or housing or social services came to Indian people through the federal government, not through the provincial government. Hence, there developed over time a continuous, intense relationship between the government of Canada and the Indian peoples. On the other hand, the government of Canada, already in the late 1940s, was laying plans to have the provincial governments extend their services to Indians. On the other hand, many Indians grew more concerned to entrench their rights and firm up their relationship with the government.

By the 1960s, several important changes were to have a lasting impact on the political context of Indian affairs. Firstly, in 1960, under John Diefenbaker's government, the Indian people were given the vote. Members of Parliament with Indian people in the constituencies were therefore compelled to take greater cognizance of the concerns of their Indian constituents. George Manuel in his book, The Fourth World--An Indian Reality, notes how western Canadian Indians ". . . believed that the vote was one useful way of demonstrating the political concerns of Indian people as Indian people." ¹⁴

Secondly, the Diefenbaker government and later the Pearson government accepted the renewed recommendation of a second Senate-House of Commons joint committee on Indian affairs (1959-61) that a Claims Commission be established to

handle Indian claims and grievances.¹⁵ This represented a recognition by the federal government that the Indian claims would not go away, and that something must be done to settle the claims. After seeking suggestions of interested parties on their draft Claims Commission legislation (Bill C-130), the Pearson government introduced Bill C-123 in Parliament in 1965, and it passed first and second reading before the August elections. With a continuing minority government situation and a change in Ministers, the Claims Commission legislation was not re-introduced, although the government publicly stated in 1966 and 1967 that it intended to do so.¹⁶ Thus Indian claims remained an outstanding issue that was passed on to the Trudeau government. Trudeau has not introduced legislation on this matter but rather has turned to a Commission of Inquiry--The Indian Claims Commission of Canada--that was mandated to recommend methods of settling outstanding Indian land claims.

Thirdly, the federal government initiated a policy discussion with the provincial governments with the view to having an extension of provincial services to Indians. The first Federal-Provincial Conference on Indian Affairs was held in 1964, and the discussions of this conference underline the growing recognition and importance of Indian affairs in Confederation.¹⁷ (This conference will be examined in more depth in chapter four.)

Fourthly, in 1966 two events occurred which were to have a definite impact on the subsequent politics of Indian affairs. In that year, the government followed the Glassco Commission recommendations on government reorganization and set up a new "Department of Indian Affairs and Northern Development." This new pairing for Indian Affairs brought both benefits and conflicts. At the same time, Parliament's reform of its standing committees had its impact on Indian affairs. On March 22, 1976, the House of Commons passed the following order of reference:

That, saving always the powers of the Committee of Supply in relation to the voting of public monies, the items listed in the Main Estimates for 1966-67, relating the Indian Affairs be withdrawn from the Committee of Supply and referred to the Standing Committee on Indian Affairs, Human Rights and Citizenship and Immigration.¹⁸

This Standing Committee was soon to become the "Standing Committee on Indian Affairs and Northern Development." With the Minister and his officials appearing to explain the objectives, programs and financial estimates of Indian affairs, opposition and government members now had a much better opportunity to be regularly informed and knowledgeable on Indian matters. In addition, Indian leaders made representations to this committee.

Fifthly, the Indian organizations developed a new national character and were to bring a new, more sophisticated brand of Indian pressure group politics to Canada. By the late 1960s provincial and treaty area Indian organizations were able to form a national Indian organization--the

"National Indian Brotherhood." Harold Cardinal describes Indian organizations and the creation of the NIB in 1969 in the following way:

Now many of our organizational troubles and problems of the past four decades have been recognized and overcome. Strong provincial leaders are emerging and behind them, strong provincial organizations. A National Indian Brotherhood has been set up by and for Indians, with an office in Ottawa from which we can present our case for the first time on a national basis.¹⁹

For Cardinal and other Indian leaders, authentic, representative Indian organizations were crucial to their cause, because:

If the situation of the Canadian Indian is to be altered, even alleviated, the central issue is the degree of sophistication that we can develop in creating organizations that are Indian controlled and representative at the reserve level.²⁰

Finally, by the mid 1960s significant new policy initiatives began to emerge from within the Indian Affairs administration.²¹ Here I am especially referring to the local self-government "grants to bands" program, which was begun in 1965. This program began to involve an ever increasing number of bands, and the bands became responsible for administering both their own revenue funds and for some government funds.

All of these key factors highlight the developing political context of Indian affairs by the late 1960s.

B. 1968--The Opening of a New Era in Government-Indian Relations

The political situation of Canada in 1968 involved an

election campaign between Robert Stanfield and Pierre Trudeau and has been described by historian W. L. Morton in the following terms:

National unity, then, was the prime issue before Canadians as they prepared to choose between these two men. On other pressing issues--inflation, taxation troubles, the housing shortage, the instability of the dollar and the economy--there was no clear line of party division . . . The victor was of course Trudeau . . . Trudeau provided a convincing image of a young god who would make all things new . . .²²

At a meeting with Indian representatives several years later, Trudeau himself describes how the Indian matters had become a 1968 campaign issue:

Well, Mr. Chairman, and fellow Canadians, I might begin with something that your Vice-Chairman Mr. Courchene referred to, the hundred years of frustration and dissatisfaction and slowness and injustice. We recognize that, we all recognize that, and that is why during the last election campaign it was discussed at such great length by Canadians in many of the meetings which I attended, not only with Indians, and there were several, but also with the white people of Canada.

We were frequently asked: what are you going to do after one hundred years in order to give the Indian man his equality. What are you going to do after a hundred years to make sure there's no discrimination against him, that he will become a full Canadian, not a special Canadian, and so on.

And it was with this in mind . . . It was I repeat an election issue not created by us or indeed only by you but by the Canadian people. I think it is something that has come to the surface of the conscience of Canadian people. . . . we do realize that the issue of Indian rights is very much on the conscience of the Canadian people and that it has to be solved.²³

The Prime Minister went on to state that Indian policy was one of the first priorities of his government. Although Trudeau appeared to be saying what the Indians wanted to hear, subsequent interviews with a variety of officials point

to the fact that Indian matters remain a personal priority of the Prime Minister.²⁴ Even though Trudeau's government was to have a great many problems with its 1969 White Paper on Indian Policy, the personal interest of Trudeau in Indian policy continues to be an important political factor.

Also in 1968 Harold Cardinal made his debut as a political leader with his election to the presidency of the Indian Association of Alberta. Cardinal brought a new politically sophisticated consciousness to the Indian Association of Alberta following his years working with the Indian Youth Council and the Canadian Union of Students in Ottawa. This is evidenced by his approach in 1968 to Indian-government relations. In early August, 1968 following an IAA executive meeting, Cardinal sent two telegrams to the Minister responsible for Indian Affairs, Jean Chretien. In the first telegram, Cardinal stated that:

- (1) The Indian Association of Alberta will not appoint a member to the Regional Indian Advisory Council as requested by the Regional Director of Indian Affairs;
- (2) the I.A.A. objects to the methods of the Department of Indian Affairs appointing Indian representatives to the Regional Advisory Councils;
- (3) the I.A.A. requests meeting with federal representatives to discuss setting up a more democratic and representative method of consultation.²⁵

By subsequent telephone and telegraph messages, Cardinal clarified that he was unwilling to regard the Regional Director as the "federal representative," and he insisted that a federal representative from Ottawa come to Edmonton

to meet with them, i.e., Cardinal wished to deal with the people who held the actual power over Indian Affairs. The second telegram to Chretien contained the following message:

- (1) I.A.A. requests a six month delay in the Indian Act discussions because of the lack of Indian understanding of the Indian Act and the implications of proposed changes. This delay would allow a proper preparation of Indian representatives.
- (2) I.A.A. requests an immediate meeting with federal representatives from Ottawa to discuss alternatives.²⁶

Cardinal was also able to garner the support for these proposals from several different sources. Ralph Steinhauer, Chief of the Saddle Lake Band, sent an identical telegram to Chretien regarding the Indian Act delay.²⁷ An editorial of the Edmonton Journal supported Cardinal's "reasonable requests" for Indian Act consultation.²⁸

Premier Manning wired Trudeau with the following message:

The government of Alberta fully supports the request of the Indian Association of Alberta for an immediate meeting with responsible federal officials from Ottawa in order that the Indian people may make known their objections to the methods of procedure in the proposed consultations on Amendments to the Indian Act.²⁹

Subsequently, a meeting was held between the Indian Association of Alberta Board and the Honorable Robert Andras, Minister without Portfolio, and J. W. Churchman, head of the Indian and Eskimo Affairs Branch. Following an exchange of views, the IAA held firm on the six month delay, and Andras agreed to bring this IAA position before his Cabinet colleagues.³⁰ Andras also agreed to freeze further

development of the Regional Indian Advisory Councils.³¹

This active political stance of the IAA under Cardinal contrasted with the pattern of IAA-federal government relations since the late 1940s, whereby the IAA tended either to deal with the Regional office or to wait patiently for months before DIA in Ottawa replied to the resolutions from the IAA annual meetings.³² Moreover, Cardinal sought government funding for the Indian Association of Alberta in order to adequately consult with his people and to hire professional staff. The voluntary Indian Association of Alberta of earlier times thus gave way to a politically sophisticated Indian organization better able to deal with modern governments, in that Cardinal could now rely on his own expertise for advice. Subsequent events pointed to the fact that Cardinal is a reform-oriented politician, and that he is anxious to combine the wisdom of Indian elders with desire for change of Indian youth. From time to time, this led Cardinal into confrontation with government, but more often he was involved in behind-the-scenes negotiations with various government ministers. Cardinal's political style and talents thus represented a new force to be reckoned with on government-Indian Association of Alberta relations.

C. Phase I (1968-70)--The Government of Canada's 1969 White Paper on Indian Policy and the Indian "Red Paper" Response

In the statement by the Prime Minister referred to earlier, Trudeau describes one of the consequences of the 1968 election for his new government:

. . . one of the very first priorities of the government which was elected after that campaign was to appoint a minister--and a young minister who also belonged to a minority in Canada, and who had no prejudices and honestly didn't think he was up to the job, but who had courage and determination and who had no vested interests in any particular solution--we asked him to come to grips with this problem and to come to grips with it quickly. So within a year, a little less, he did propose to Cabinet a statement of policy33

The new minister was Jean Chretien. He along with Robert Andras, travelled throughout the country consulting with Indian people about a new policy. These consultations had two different meanings for Indians and government, because each side had developed an agenda that involved quite different priorities. Initially, government was primarily concerned about revising the Indian Act, and Indians, on the other hand, wished first and foremost to have their rights and claims recognized.

Several central factors emerge from the process of "consultation" and policy formulation that led to the White Paper statement (see Appendix 4 for the IAA's summary comparison of the White Paper and their Red Paper response).

Firstly, the government viewed this statement as a radical departure from the past policy. Both in his statement to the Standing Committee on Indian Affairs and to the House of Commons, Chretien emphasized how the "paternalistic" Indian policy of the past was completely inadequate to allow Indians to take over control of their own affairs.³⁴ That is not to say that there were no elements of continuity from past policy, but rather to note the conviction of the minister, who was ". . . convinced that bold new initiatives are required, because it is clear that the old ones have not worked,"³⁵ and the radical nature of the constitutional and legislative changes recommended (for example, the legislative and constitutional basis of discrimination should be removed). Using the terminology of public policy analysis, it can be described as "non-incremental." Incrementalist public policy has been described by Charles Lindbom as decision-making based on marginal differences between a number of alternatives in relation to the set goals.³⁶ In his critique of Lindblom, Yehezkel Dror points out that incrementalist policy-making pre-supposes three essential conditions, one of these being;

The results of present policies must be in the main satisfactory (to the policy makers and the social strata on which they depend), so that marginal changes are sufficient for achieving an acceptable rate of improvement in policy results.³⁷

Indian policy had proved to be unacceptable to Canadian

policy-makers and the electorate, and consequently a radical non-incremental policy departure was perceived to be necessary.

Secondly, the White Paper statement of 1969 appears to have been the result of wide-ranging consultations not only with Indian people but with various government departments and agencies. The consultations with Indians produced an unexpected result for government, as the Indian representatives chose to express their grievances and claims, and largely ignored the Indian Act revision suggestions of government officials.³⁷ Similarly, it is fairly clear from the nearly unanimous Indian rejection of the White Paper policy that few of the Indian's policy suggestions were deemed acceptable by government. In a published article on Indian policy, Audrey Doerr, a former official of the Privy Council Office, suggests that the source of the White Paper was in the Department of Indian Affairs and particularly the deputy minister:

The original idea to issue a White Paper has been claimed by J. A. MacDonald, then the Deputy Minister in the Department. In late December 1968, he conceived the plan whereby the Department would make a new "offer" to the Indian people. When the Minister returned from Christmas vacation in January 1969, MacDonald approached him with the idea and was able to persuade him of the political utility of such an approach. The decision was subsequently approved by Cabinet on February 13, 1969.³⁹

It appears, however, that there were many inputs from diverse governmental sources before the final White Paper of 1969 was issued. These sources included: the Department of Justice; the Privy Council Office; and the Prime Minister's Office.

In a recent speech to the Indian Association of Alberta, R. M. Connelly of the Department of Indian Affairs states that:

D.I.A.N.D. had a very small role to play in the 1969 White Paper. It was mainly an exercise between the Department of Justice and the Privy Council.⁴⁰

It is reasonable to assume that the sections of the White Paper dealing with "lawful obligations" vis-a-vis treaties and the constitutional question had their source in the Department of Justice, because it is their job to provide the federal government legal opinion on such matters.⁴¹ Similarly, the section stating that "services must come through the same channels and from the same government agencies for all Canadians" could well have come from the Privy Council Office (PCO), probably the federal-provincial section of the PCO.

In a recent interview with an official from outside the Department of Indian Affairs, the point was also made that the "P.C.O. had some direct input" into the '69 White Paper.⁴² It may also be assumed that the Prime Minister's Office had some input due to the political nature of the proposals and Trudeau's personal interest in these matters.

In this light, I think the "Statement of the Government of Canada on Indian Policy, 1969" is what it purports to be--a statement of the government's position. In my judgement, it was not a simple matter of competing factions within the Department of Indian Affairs, as Harold Cardinal suggests in the following passage:

The underhanded preparation of the document now established as Indian policy is a story in itself, for it was a case of a continued struggle between department officials, headed by Deputy Minister John A. MacDonald, and the liberalizing forces led by Mr. Andras.⁴³

As a "White Paper" the 1969 statement on Indian Policy was conceived as a "discussion paper" to evoke response, and in this regard it was highly successful.

When Chretien presented his White Paper Indian policy statement to the House of Commons on June 25, 1969, the opposition parties recorded their general agreement. Within a month, however, as Indians voiced their negative views on the White Paper, the opposition parties changed their tune. Trudeau later chided the opposition on this point:

. . . What is the opposition's Indian policy? It was one thing this day, and ten days later it was another. Precisely, what it is we do not know. On one day it was years too late and on another it was years too soon.⁴⁴

The reports of the "Standing Committee on Indian Affairs and Northern Development" also provide evidence for the heavy reliance of opposition parties on the views of Indian people as the basis for the opposition position on Indian policy.⁴⁵

Eventually, the government felt compelled to withdraw its White Paper proposal in the face of an articulate "unofficial" opposition, namely the Indian organizations and a less than sympathetic public response. On June second and third, 1970, the National Indian Brotherhood met in Ottawa and endorsed the Citizen's Plus "Red Paper" of the Indian Association of Alberta. On June fourth, 1970, the "Red

Paper" was presented to the Prime Minister and members of his Cabinet. Trudeau effectively withdrew the White Paper as a complete package for dealing with the Indian situation in his following statement to the Indians:

. . . we will be meeting again and we will be furthering the dialogue, . . . we're in no hurry if you're not . . . and we won't force any solution on you, because we're not looking for any particular solution . . .⁴⁶

The Prime Minister's statement was generally perceived as putting the White Paper on Indian Policy on the shelf.⁴⁷

On March 17, 1971 Jean Chretien, in a speech at Queens University, confirmed both the White Paper suspension and the new consultative direction:

The Government put forward its proposals for a future Indian Policy a year and a half ago. These stimulated and focussed a debate and have served a necessary purpose. They are no longer a factor in debate. The Government does not intend to force progress along the directions set out in the policy proposals of June 1969. The future direction will be that which emerges in meetings between Government and Indian representatives and people.⁴⁸
(Underlining in the original.)

This change of direction was made concrete within the departmental structure. Later in the spring of 1971 Chretien announced the disbanding of the DIA's "Indian Consultation and Negotiation Group" which had been responsible for the White Paper negotiations, and its replacement with a "Research and Liason Branch" to effect stronger liaison with Indians, provincial governments and other federal departments.⁴⁹ For Chretien this was ". . . in keeping with the alterations in the direction of Indian policy."⁵⁰

The external threat that the White Paper had posed to

status Indians in Canada presented a situation that allowed Indians to pull together as never before. The National Indian Brotherhood (NIB) member organizations stood as one in their rejection of the '69 White Paper, and the NIB unification became an accomplished fact. In 1969-70, Indian Organizations also received core funding and hence their capacity to deal more effectively with government was strengthened.

In terms of our specific interest in Indian land claims and their linkage with Indian policy, the Government's 1969 Indian Policy statement included the following main points:

5. Claims and Treaties

Lawful obligations must be recognized.

Many of the Indian people feel that successive governments have not dealt with them as fairly as they should. They believe that their lands have been taken from them in an improper manner, or without adequate compensation, that their funds have been improperly administered, that their treaty rights have been breached. Their sense of grievance influences their relations with governments and the community and limits their participation in Canadian life.

Many Indians look upon the treaties as the source of their rights to land, to hunting and fishing privileges, and to other benefits

The terms and effects of the treaties between the Indian people and the government are widely misunderstood. A plain reading of the words used in the treaties reveals the limited and minimal promises that were included in them

The basic promise to set aside reserve land has been kept, except in respect of Indians of the Northwest Territories and a few bands in the northern parts of the Prairie Provinces. These Indians did not choose land when the treaties were signed. The government wishes to see these obligations dealt with as soon as possible . . .

The Government and the Indian people must reach a common understanding of the future role of treaties. . .

Finally, once Indian lands are securely within Indian control, the anomaly of treaties between groups within society and the government of that society will require that these treaties be reviewed to see how they might be equitably ended.

. . . Others relate to aboriginal claims to land. These are 'so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian community. This is the policy that the Government is proposing for discussion. . .

The Government has concluded that further study and research are required by both the Indians and Government. It will appoint a commissioner who, in consultation with representatives of the Indians, will inquire into and report upon how claims arising in respect of the performance of the terms of treaties and agreements formally entered into by the representatives of the Indians and the Crown, and the administration of moneys and lands pursuant to schemes established by legislation for the benefit of Indians may be adjudicated.⁵¹

Another section of the '69 paper dealt with Indian lands, namely established Indian reserves, and the policy proposed was that legal title be transferred to the Indian bands themselves rather than being held in trust by the federal Crown. Indian bands would therefore be able to utilize the land as collateral to secure loans. Eventually, the government believed that reserve land would also be subject to property taxes. The above conception of the treaties, and especially the ending of special status for Indians and their reserve lands was the nub of the problem connected with the White Paper in the view of Indian peoples. Indian leaders believed that they were already in an extremely insecure socio-economic situation--with poverty a way of life for many of their people--and it was inconceivable to them that their position could be further eroded through the ending of

treaties, special constitutional status and special status for reserves. Hence the near universal opposition to the policy from Indian organizations and Indian leaders.

However, pursuant to the above quoted section on claims, Dr. Lloyd Barber was appointed to the position of Indian Claims Commissioner of Canada in December of 1969.⁵² In light of his association with the government's White Paper policy, Barber initially had an extremely rocky road to follow in the Indian communities. Gradually, Barber did win a grudging acceptance from the Indian people, as he was able, among other things, to get his terms of reference expanded to include aboriginal rights questions and to help settle the treaty 7 ammunition claim.⁵³ More importantly, as time went on Barber came to really understand the Indian position on many of the claims and Indian policy questions, and he increasingly took an advocacy role for these Indian positions in society generally and with the government of Canada. Barber represented, therefore, an important third party in developing Indian-Government relations.

D. Phase II (1970-74)--From A Policy Vacuum to a New Statement on Aboriginal Rights

The White Paper-Red Paper exchange created a new situation for Indian policy making in Canada. Unilateral policy-making by government had been found to be unworkable. Government now had to adjust to the new situation whereby it would "have to move with the concurrence of Indian

leadership."⁵⁴ The Department of Indian Affairs was thrown into a situation where for a number of years it had to operate with little policy direction, i.e., a policy vacuum had developed.

On the side of Indian leadership, they were not anxious to come forward with policy suggestions until research on Indian rights and claims had been completed, and it took several years before the research funding for their rights and claims was confirmed by the Cabinet.⁵⁵ This research funding was to cover a four year period from 1972 to 1976 and totalled \$7.5 million on a Canada-wide basis. Indian leaders remained suspicious of government motives but did make several important policy suggestions, including the "Indian control of Indian education" policy paper. Trudeau and Chretien had tossed the "ball into the Indian court" as it were, but Indian leaders found that policy suggestions are extremely difficult to propose, especially when Indian policy presupposes an Indian consensus and this normally requires extensive consultation in the Indian communities.

Perhaps the best reading of the government's new position in the post-White Paper era is stated in the following DIA recommendations, which were approved by the Cabinet in June, 1972:

The Government could confirm indications already given to the Indians that the 1969 policy proposals are suspended and hence not being implemented. At the same time the Government should declare its intention to continue the process of consultation with Indians on all matters of concern to them, including their response to

the 1969 proposals. In keeping with this position, and subject to any judicial rulings handed down, no fundamental policy decisions would be made in respect of status and any special rights flowing from it until Indians could make their presentation to Government, probably after they have completed their research. After Indian submissions are received a full scale review of Indian policy might then be undertaken and decisions could be made in light of circumstances at that time. No preplanned time frame would apply to the period required to complete the research and the resultant steps. Meanwhile, in consultation with Indian people, the Government would continue its efforts to improve their conditions, by progressively involving them in the administration of their own affairs, and by providing programs and services or arranging for them with the provinces. Programs would be adjusted in response to reasonable Indian proposals. During this period, federal policy and program activities would require careful coordination by the Department of Indian Affairs. Within this general framework, there would be no inconsistency in taking early action to deal with matters that could be settled separately, such as land entitlement under treaties No. 8 and 11, other lawful obligations and changes in legislation to facilitate administration and devolution of responsibility and authority to Indian people.⁵⁶

In the same cabinet document, which was labelled a "situation report," the following financial considerations were noted:

Total appropriations for the Department of Indian Affairs have increased from \$120 million in 1967-68 to \$284.5 million in 1972-73. An economic development fund which will be built up to \$50 million and now stands at \$27 million has been established. Overall Government expenditures on services to Indian individuals and communities increased from \$150 million in 1967-68 to over \$300 million in 1971-72. Even if the same rate of increase is not maintained increased funds in excess of current levels will still be required to provide the necessary services and the total cost will remain a substantial element in the national budget. This estimate does not take into account the additional funds which will be required for land and treaty settlements.⁵⁷

Another interesting aspect of this Cabinet memorandum, which was presented by Jean Chretien, was the breadth of the subject matter. Under the heading of "Factors," the following

sub-headings were examined in some fourteen pages of analysis:

1. The 1969 Policy Proposals
2. Indian Counter-Proposals
3. Indian Act
4. Consultation and Involvement
5. Claims and Grievances
6. Cultural Heritage and Identity
7. Social Condition
8. Off-Reserve Indians
9. Local Government
10. Education
11. Economic Development
12. Coordination, Control and Interdepartmental Relationships⁵⁸

The breadth of these areas of examination indicates that the Department of Indian Affairs operates almost as a mini-government in relation to its Indian clientele. Moreover, the complexity of the areas under consideration is compounded by the whole history of Indian-Government relations. Both the breadth and the complexity of Indian affairs lend support to the view that the Minister responsible for Indian Affairs must rely heavily on the advice of his civil servants. This view was confirmed through a series of interviews in the spring of 1977.⁵⁹ This reliance on the briefing of advisors characterizes to a greater or lesser degree all three Ministers--Chretien, Buchanan, Allmand--who have held responsibility for Indian Affairs in the Trudeau Cabinet. By making this assertion, I am not attempting to minimize the individual strength and attributes of the three Ministers in question, but rather to point out a constant dimension for all of them. This relatively constant factor must, however, be examined in light of the

new factors in the Trudeau era, namely, the policy impact of the Indian organizations and the Indian Claims Commissioner Dr. Lloyd Barber. This examination will be primarily done in the next chapter on the "Indian Rights Process."

The 1972 Cabinet policy on Indian matters led to a period of piecemeal policy and programmes development, because Cabinet felt bound to receive Indian submissions before a full scale Indian policy review could begin again. In the aforementioned article by Audrey Doerr, she asserts, "For the most part, Indian policy is now being developed on a piecemeal programme-by-programme basis."⁶⁰ In order to gain a more detailed perspective on the financial implications of various Indian Affairs programmes the following overviews are useful:

Fiscal Year Ending	March 31, 1965	March 31, 1976
1. Ongoing Programs		
(a) Education	O* = \$27,200,000	130,942,000
	C† = 7,415,000	34,000,000
(b) Community Affairs	O = 12,640,000	29,202,000
	C = 2,695,000	54,291,000
(c) Economic Development	O - 2,018,000	20,184,000
	C = 656,000	6,500,000
2. Overall DIA Expenditure		
	\$60,000,000 (1964-65)	\$435,000,000 (1975-76)

* O = Operating budget

† C = Capital budget

3. New Programs

- (a) Indian Participation Program including the Indian Organization Core Funding (Secretary of State, began 1969-70)

\$1,336,000 (1970-71) \$13,632,000 (1975-76)

- (b) Indian Economic Development Fund (began 1969)

\$8,000,000/year

- (c) Financial Administrative Devolution to Band Councils (began 1965)

\$16,800,000 (1970-71) 54,125,000 (1975-76)

- (d) Native Cultural Education Centres (began 1971)

\$5,269,000 (1971-72) 22,511,000 (1975-76)

- (e) Indian Rights and Treaties Research (began 1970)

\$1,200,000 (1971-72) 2,652,000 (1975-76)⁶¹

The above cost figures are taken from published governmental estimates and costs, but do not reflect any expenditures for Northern Development section of the Department of Indian Affairs and Northern Development. In addition, it should be noted that the government undertakes additional Indian related expenditures through the departments or agencies of: National Health and Welfare, Regional Economic Expansion, Central Mortgage and Housing Corporation, and the Secretary of State. "Indian health services" are a sizable budgetary item under the Department of Health and Welfare with these costs running near one-half billion dollars. Taken together, current Indian related annual expenditures for the Trudeau

government now runs close to \$1,000,000,000. This is tangible substantiation that Indian-related expenditure is a policy priority for the Trudeau government. In most interviews with officials, this emphasis on Indians as priority was related to the personal interest of the Prime Minister.⁶² In this respect, one top official mentioned that the Department of Indian Affairs had never had any real trouble in getting their annual departmental estimates through the Treasury Board.⁶³ In the list of new programs, it should be noted that the programs dealing with core funding for Indian organizations and the native cultural learning centres can be most clearly traced to policy suggestions originating in the Indian organizations.⁶⁴ Despite the massive infusion of funds into the Indian communities, many Indian leaders still believe that the funding is inadequate to the task at hand.

In the area of aboriginal land claims, the Trudeau government did change its policy. In a recent interview Dr. Lloyd Barber, the former Indian Claims Commissioner of Canada, stated that: "The main watersheds of Indian policy since 1969 have been the 1973 policy statement on aboriginal rights and the government's decision to have an 'Indian Rights Process.'"⁶⁵ I would now like to examine the influences on the policy process immediately prior to the government's aboriginal rights decision in August, 1973.

Perhaps the crucial event in the aboriginal rights "turn around" of the federal government was the Supreme Court

of Canada's split decision in January, 1973 on the aboriginal rights of the Nishga Indians.⁶⁶ The legal impact of the Calder decision has been summarized as follows:

. . . seven judges divided four to three against the Nishga claim. Six of the band supported the notion of an aboriginal title "dependent on the goodwill of the Sovereign," but there was no agreement on the fundamental questions of how such rights might be extinguished or evalutated.⁶⁷

The political impact was also important. Shortly after the Supreme Court decision, the Prime Minister announced to a group of B.C. Indians that the government was reconsidering its position in light of this judicial decision. Apparently the federal Department of Justice was caught off guard by this decision, and their previous position that aboriginal rights did not exist was now significantly undercut.⁶⁸ This left the way clear for the Department of Indian Affairs to suggest a new governmental policy on aboriginal rights. In February of 1973, the Yukon Indians presented their aboriginal rights claim "Together Today for Our Children Tomorrow."⁶⁹ This reasonable, future-oriented land claims proposal received a good hearing in Ottawa.

Just before the government was scheduled to meet with the Yukon Indians, the Prime Minister held a special meeting to discuss the issue with his key advisors. This group included: Jean Chretien, Basil Robinson (Deputy Minister), John Ciaccia (Assistant Deputy Minister) of the Department of Indian Affairs; Otto Lang, Minister of Justice; Gordon Robertson, Secretary of the Privy Council Office; an official

of the Prime Minister's Office; and Lloyd Barber and Brian Pratt (Executive Director) of the Indian Claims Commission.⁷⁰ The Prime Minister asked these advisors how the government should respond to this Yukon proposal, and the advice was unanimous--the government must accept the proposal.⁷¹ Later that day, the Prime Minister announced to the Yukon Indians that he was prepared to negotiate their claim.⁷² This effectively meant that the government was going to recognize aboriginal rights. In this connection, it should also be mentioned that the Standing Committee on Indian Affairs and Northern Development had agreed to the National Indian Brotherhood's position paper on Aboriginal Rights, and this stand of the committee later precipitated a special debate in the House of Commons on this subject.⁷³ The government did not, however, announce its new policy on aboriginal rights until August 8, 1973.⁷⁴

In light of the significant impact on future land claims negotiations for both treaty and non-treaty areas, the most important elements of this statement relating to treaties and aboriginal rights are quoted below:

re. Treaties

As the Government pledged some years ago, lawful obligations must be recognized. This remains the basis of government policy. The Federal Government's commitment to honour the Treaties was most recently restated by Her Majesty . . . "You may be assured that the Government of Canada recognizes the importance of full compliance with the spirit and terms of your Treaties."⁸⁰

re. Aboriginal Rights

The present statement is concerned with claims and proposals for the settlement of long-standing grievances. These claims come from groups of Indian people who have not entered into Treaty relationship with the Crown . . . In essence, these claims relate to the loss of traditional use and occupancy of lands in certain parts of Canada where Indian title was never extinguished by treaty or superceded by law, . . . The lands in question lie in British Columbia, Northern Quebec, the Yukon and Northwest Territories.

In reviewing its position on the claims of Indian and Inuit people, the Government has had the benefit of, and takes into account, submissions made by their organizations, views expressed by them and others in the Standing Committee on Indian Affairs and Northern Development, and recent proceedings in the courts in connection with Indian claims.

The Government has been fully aware that the claims are not only for money and land, but involve the loss of a way of life. Any settlement, therefore, must contribute positively to a lasting solution of cultural, social and economic problems that for too long have kept the Indian and Inuit people in a disadvantaged position within the larger Canadian society.

It is basic to the position of the Government that these claims must be settled and that the most promising avenue to settlement is through negotiation. It is envisaged that by this means agreements will be reached with groups of the Indian and Inuit people concerned and that these agreements will be enshrined in legislation, enacted by Parliament, so that they will have the finality and binding force of law.

The Government is now ready to negotiate with authorized representatives of these native peoples on the basis that where their traditional interest in the land concerned can be established, an agreed form of compensation or benefit will be provided to the native peoples in return for their interest.⁷⁶

The first, concrete example of this new policy being implemented through to the final passage of legislation is "The James Bay and Northern Quebec Agreement."⁷⁷ In this case, by the summer of 1977 legislation had been passed through

the Parliament of Canada and the Quebec National Assembly. At the present time, aboriginal rights negotiations are still underway with Indian and Inuit peoples of: Yukon, Northwest Territories and British Columbia. In the latter instance, the province of British Columbia is also involved.

Based on the foregoing analysis, the significant influences in order of priority on the new aboriginal rights policy of the government, included:

- (a) Supreme Court of Canada "Calder" decision;
- (b) the policy advice of the Department of Indian Affairs;
- (c) the policy advice of other government departments or agencies, namely, the Privy Council Office, the Prime Minister's Office and the Department of Justice;
- (d) the policy advice of the Indian Claims Commissioner of Canada;
- (e) the presentations of the Indian organizations to the government; and
- (f) the policy position of the Standing Committee on Indian Affairs and Northern Development.

While the ranking of these policy influences is open to debate, I think that I have isolated the various sources of policy advice for this particular shift in Indian policy. This changing constellation of sources of policy influence

can be seen as a mid-point between the unilateral policy-making evidenced in the 1969 White Paper and the eventual evolution of joint policy-making between Indian leaders and a Committee of Cabinet.

E. Phase III (1974-77)--Organizational
Changes as a Background to the
Evolution towards Joint
Policy-Making

In light of the fact that we will examine the main themes of the evolution to joint policy-making in the next chapter on "Indian Rights Process" (1974-77), I will here only examine some aspects of the changing organizational responses by two of the key participants--the Department of Indian Affairs and Northern Development and the Indian organizations, particularly the National Indian Brotherhood and the Indian Association of Alberta. This will allow us to take a reading on the progress and change on both sides and will provide a background for the next chapter.

As our examination has shown, the White Paper-Red Paper exchange led to a highly political environment and to a further erosion of trust between Indians and government.

The consequent suspicion of natives heightened the tensions on both sides. These problems were somewhat overcome by certain mutually agreed upon policy directions, such as the aboriginal rights statement in 1973. In any event, this new political environment has forced the Department

of Indian Affairs to reassess its role in relation to Indian people.

The changing role of the Department of Indian Affairs Indian and Eskimo Branch has been described in various ways. In the most recent Annual Report of the Department of Indian Affairs and Northern Development, the changing role is described as follows:

The Indian and Eskimo Affairs Branch seeks to assist Indian and Eskimo populations in administering their own affairs. This is part of the continuing change in the Department's role from one of control and direction to one of support and of bringing the necessary resources to Indian populations so that self determination can be achieved, at a rate and in a style suitable to the people.⁷⁸

The evolving departmental role might therefore be placed on a continuum between the older position of "protector" and the current position of "consultation, negotiation and partnership."⁷⁹

The highly politicized situation of Indian policy-making at the top has had implications for the program implementation role of the regional offices. In a recent interview, former acting Regional Director, Bob Carney, expressed the frustration of the ambiguity of policy.⁸⁰ By ambiguity Carney means that a responsible official often is unclear how to respond to inquiries--for example, whether or not a particular program, such as post-secondary student funding, is in any one of the following categories:

- (a) under negotiation with the National Indian Brotherhood;
- (b) no further funds available in the current fiscal year; *
- (c) funds possibly available from other federal or provincial sources; and
- (d) some further funds available from discretionary sources available to the Minister.⁸¹

For another top official at the regional office, the principal implications of recent Indian policy-making are that all policies must be a joint endeavour, and that the DIA must shift from being a "doer" to being an "advisor."⁸² Certainly, this last comment is an indication of the apparent direction of events and the change in philosophy and role of the DIA. Problems remain, however. At the present time, there is no legislative base for the strong trend towards devolution of authority to Indian bands, whether in the area of education or band administration. Consequently, Band Councils must operate, in effect, as an "extension of the Department of Indian Affairs."⁸³

The changes in role perception are also evident in The Department's Ottawa staff, who must reckon with an articulate Indian leadership from all parts of the country. Indian leaders would prefer to meet directly with the Minister responsible for Indian Affairs, rather than his

officials, and this forces the Ottawa bureaucracy to be on their toes, in that the Minister now has another source of potential policy advisors.

This being said, it is still clear that the Minister relies heavily on the advice of his civil servants. In two separate interviews with civil servants in DIAND who have seen the coming and going of three ministers, some light is shed on the style of the three Ministers in dealing with their officials.⁸⁴ Jean Chretien appears to have relied on civil servant policy advice, but he often put the final proposals to Cabinet in his own words using several different options to meet a particular situation.⁸⁵ Judd Buchanan was a good listener and perhaps was the most dependent Minister on civil servant policy advice, but he did not always take this advice.⁸⁶ Warren Allmand had the tendency to bring more of his own views on alternative options or concepts to departmental policy discussions, and there is some concern that he does not listen enough to civil servant advice.⁸⁷

In any event, these changes in the Department of Indian Affairs perception of itself and its role might be ascribed to a shift in "agency philosophy" to use a phrase of Peter Self, a Public Administration professor. Self describes the importance of an agency philosophy in the following way:

. . . agency philosophies are shaped by relationships with clients. The client group may be small and ill-organized or it may be the opposite. In the former case, the professional staff of the agency will probably regard

themselves as protectors and defenders of the client group and interpreters of its needs. An example is problem families. In the latter case, the clients will articulate their own demands effectively, and the agency will face the problem of squaring these demands with its interpretation of public policy. An example is farmers.⁸⁸

To follow Self's line of thought, the Department of Indian Affairs is rapidly moving from the former to the latter situation. Indian Affairs is likely tending to become like other departments with a highly politicized clientele, and the actual bureaucratic influence will vary from Minister to Minister along the lines suggested by Thomas Hockin:

The amount of leverage a minister actually exercises with his officials varies, among other things, according to the personalities involved, the prestige of minister, the length of stay of the minister in his portfolio, and most important, the prime minister's or cabinet's (or its staff agency, the privy council's) willingness to back up the minister on his policy initiatives to overcome the objectives and delay tactics from officials in his department.⁸⁹

Stated more positively, the support of the Prime Minister is crucial. If we look at the records of both Chretien and Buchanan as Trudeau Ministers responsible for Indian Affairs, we note that Chretien, an original Trudeau minister, has been promoted while Buchanan demoted and this is probably indicative of the Prime Minister's opinion of the two men. It may, therefore, be surmised that Chretien likely had firmer backing from the Prime Minister in the running of the Indian Affairs department. Since Warren Allmand was the Minister of Indian Affairs for such a short period of time, it is difficult to make any evaluation of his political clout with the Prime Minister vis-a-vis Indian policy.

In this Trudeau era of government, the Indian organizations have undergone real changes in political sophistication and effectiveness. Part of the change in political effectiveness can be attributed to a more sympathetic modern political environment. Within the Indian organizations themselves, however, many changes have occurred. Firstly, the development of the National Indian Brotherhood was essential to deal with the national government. Whatever its more recent problems of reaching a consensus of Indian leaders, the National Indian Brotherhood came together as an effective national voice of Indian people in response to the government's White Paper and as a result of strong Indian efforts to make it work.

Secondly, the Indian organizations have effectively utilized the media to present their cases to the public. In other instances, they have presented well documented briefs to the Standing Committee on Indian and Northern Affairs and to the government. These well documented briefs are due in part to a shift in emphasis within the Indian organizations from voluntary associations to Indian-style bureaucracies with a paid professional staff and field workers.

Thirdly, the Indian leaders themselves, although they had some previous experience dealing with the Department of Indian Affairs, gained much experience in the negotiations associated with the White Paper-Red Paper exchange and its aftermath. This "testing under fire," through the crisis

that the White Paper had presented for Indian communities, strengthened the confidence of Indian leaders to deal effectively with government. That is not to say that there were no defeats along the way. Harold Cardinal resigned as President of the Indian Association of Alberta in December 1971 as the result of accusations by Jean Chretien that the Indian Association of Alberta had failed to properly account for government funding.⁹⁰ Cardinal was re-elected to office the following June, and returned to do battle with the government. Chretien's attacks had a definite impact on Cardinal's thinking, in that he afterwards advocated that Indians carefully pick their battles with government so as not to enter into struggles they were bound to lose.⁹¹ Cardinal and other Indian leaders learned a great deal in the dealings with the Trudeau government even if this experience did bring some political scars.

To relate this experience and evolution of Indian organizations to other pressure groups in Canadian society, the article by A. Paul Pross, "Pressure Groups: Adaptive Instruments of Political Communication," provides us with a point of reference.⁹² Pross juxtaposes "issue-oriented" and "institutionalized" pressure groups on a continuum with the usual progression of pressure groups from the issue-oriented category to the institutionalized category. In attempting to relate the Pross categories to the National Indian Brotherhood and the Indian Association of Alberta the

adaptation of the Pross continuum framework emerges as seen in Table 1. Thus, we can see that these two Indian organizations have some attributes of fledgling pressure groups (in terms of objectives and media orientation), and some attributes of mature pressure groups (in terms of organizational features), and some attributes of an institutionalized pressure group (in terms of access to government). This latter aspect of access to government will be fully explored in the next chapter.

However, there are certain characteristics of Indian organizations that definitely differ from this pressure group continuum. Firstly, Indian organizations are somewhat closer to political parties in their objectives. Here I am referring to the fact that most Indian organizations wish to assume some of the responsibilities of government, particularly to administer certain program services for Indian people. Secondly, Indian organizations find it perfectly normal to make public statements against the government department which is most closely associated with their concerns. This runs contrary to the practices of most "institutionalized, access-oriented" pressure groups. Thirdly, Indian organizations prefer to deal almost exclusively with the Minister of Indian Affairs or with Cabinet Ministers, but they have a deep distrust of bureaucrats. This practice is, in all likelihood, related to what Indians consider to be mishandling of Indian Affairs by the bureaucracy. Again this practice

Table 1

THE EVOLUTION OF INDIAN PRESSURE GROUPS

	(i) Issue Oriented	(ii) Fledgling	(iii) Mature	(iv) Institutionalized
<u>A. Group Characteristics</u>				
a) Objectives	single, narrowly defined	multiple but closely related	multiple, broadly defined and collective	multiple, broadly defined, collective and selective
b) Organizational Features	single member-ship, no paid staff	membership can support small staff	alliances with other groups/ staff includes professionals	extensive human and financial resources
<u>B. Levels of Communication</u>				
a) Media Oriented	publicity focused protests	presentation of briefs to public bodies	public relations; image ads, press releases	image building
b) Access-Oriented	confrontation with politicians, officials	regular contact with officials	regular contact, representation on advisory boards, staff exchanges	regular contact, representation on advisory boards, staff exchanges

Arrows denote progression of Indian pressure groups from "issue-oriented" towards "institutionalized."

differs, at least to some degree, with most other pressure groups.

F. Indian Policy and Public
Policy Definitions

At this juncture, I would like to review how our examination of Indian policy relates to a definition of public policy developed by Richard Simeon.⁹⁴ He describes public policy by using three dimensions: scope, means and distribution.⁹⁵ For Simeon, the scope of government is defined as ". . . the range of matters which are subject to public choice and in which governments are involved."⁹⁶ As we have seen, Indians have been living in a unitary state administered by the Department of Indian Affairs. In fact, the department has exhibited, since World War II, a type of "positive state" presence on Indian reserves by way of involvement in such areas as education, economic development, health and band government. Latterly, this scope of government has been decreased in so far as the Indian band administrations have taken over more and more of their own affairs.

One important aspect of Indian policy is its relation to Indian lands and Indian land claims. We have noted the two headings of federal jurisdiction under section 91(24) of the BNA Act, namely "Indians" and "lands reserved for Indians." In the latter connection, the federal government negotiated to extinguish the Indian aboriginal rights to the land, and then the Indian treaty settlements that followed

formed key ingredients of Indian policy. Moreover, the Indian Act has always contained primary sections on Indian reserve lands and the protection of these lands--for example, certain legal procedures had to be followed before reserves could be surrendered. Both of the key policy statements in 1969 and 1973 of the Trudeau government dealt with Indian reserve lands and Indian land claims. For the Indian people themselves, the Indian lands are the vital base for their future economic and social well-being. Hence, Indian policy and Indian land policy are closely linked for both government and Indians.

"Means" is defined by Simeon as ". . . the means by which governments make and enforce policy choices."⁹⁷ An historical examination of the Indian Act shows the unique regulatory and coercive machinery, which the Minister responsible for Indian Affairs has held. Jean Chretien admitted this power still exists today:

In the Indian Act, there are 135 clauses and I think 111 of them mention that the Minister "must" and "shall" and "will" and so, do this for Indians. I think the Indians are able to make their own decisions and we have to change the pattern to allow Indians to make their own decisions at the band level . . .⁹⁸

As we have seen in the White Paper exchange, there are definite limits to the coercive power of the government. Indeed, the government has shifted the emphasis more recently to less coercive and more cooperative efforts of making and enforcing policy.

The distribution dimension of public policy is defined

by Simeon in a series of questions:

Who gets what? How are the costs and benefits of government activity distributed among members of society? To what extent does government serve as a mechanism for redistribution of income or other benefits?⁹⁹

The dramatic rise in Indian expenditures in the last decade indicates that Indians are increasingly on the receiving end of a solid portion of federal public spending. Paradoxically, through Indian reserve income tax exemptions, Indians are not contributing very much to governmental tax revenues. Within the Indian communities themselves, however, there are conflicting demands for the funds. In Alberta, the Indian bands were eventually successful in getting all the native cultural learning centre funds at the expense of the Indian Association of Alberta. On the other hand, the IAA had been successful in hanging on to the major share of the claims research funding. The conflict over funding--the who gets what? aspect of policy--has had other repercussions in Alberta. Specifically it has contributed to political conflicts and disunity between the IAA and the member Indian bands.

Concluding Note

The evolving political context and the evolution of political relations between the Trudeau government and the Indian organizations has been our principal concern in this chapter. "Government-Indian relations" in this period have been in a state of flux and change, but eventually both sides evolved a different position, mainly as the result of

the White Paper-Red Paper exchange and its aftermath. This dynamic government-Indian interaction was to reach a new plateau in the "Indian Rights Process," which will be our next area of study. By the mid 1970s, however, it was already clear the subject of Indian policy and Indian claims represented a highly controversial, politicized issue for both the federal government and the Indian people.

FOOTNOTES--CHAPTER 2

¹Alan Cairns, "The Politics of Indian Affairs," H. B. Hawthorne, editor, A Survey of the Contemporary Indians of Canada: Economic, Political and Educational Needs and Policies, Vol. 1 (Ottawa, Queen's Printer, 1966), p. 361.

²*Ibid.*, p. 363.

³John Tobias, "Protection, Civilization, Assimilation; An Outline History of Canada's Indian Policy," The Western Canadian Journal of Anthropology, Volume VI, Number 2, 1976, p. 24. (Tobias cites the Public Archives of Canada RG 10 black files, Vol. 6810, file 470-2-3, Vol. 12, Part II.)

⁴See, for example, Appendix EM the Special Joint Committee of the Senate and the House of Commons appointed to examine and consider the Indian Act--submission of the Indian Association of Alberta, April 21, 1947, pp. 571-603.

⁵Hugh Dempsey, "The History of the Indian Association of Alberta," Kainai News, June 15, 1970, pp. 10-12.

⁶*Ibid.*, p. 11.

⁷Journals of the House of Commons of Canada, No. 112, Tuesday June 22, 1948, pp. 647-651.

⁸Harris, Hansard, June 21, 1950, p. 3938.

⁹Harris, Hansard, March 16, 1951, p. 1252.

¹⁰The Indian Act, Revised Statutes of Canada, Chapter 29, 1951, Section 4(2).

¹¹For example, on May 15, 1951 the CCF Member of Parliament for Selkirk Manitoba, Mr. William Bryce announced in the House of Commons that he had received the following message from the Indian Association of Alberta:

Informed special committee passed Bill 79 without incorporating recommendations from conference Indian representatives. If report true deeply regret and protest such action Urge reconsideration of contentious clauses during debate . . .

¹²Journals of the House of Commons, No. 112, June 22, 1948, p. 648.

¹³Interview, June 10, 1977, Ottawa (Confidential source).

¹⁴George Manuel, Michael Poslums, The Fourth World--An Indian Reality (Don Mills, Collier Macmillan Canada, Ltd., 1974), p. 170.

¹⁵Interview, June 10, 1977, Ottawa (Confidential source), and Indian Claims Commission, Indian Claims in Canada (Ottawa, Information Canada, 1975), p. 21.

¹⁶Interview, June 10, 1977, Ottawa (Confidential source).

¹⁷Government of Canada, Department of Citizenship and Immigration, Report of Proceedings--Federal-Provincial Conference on Indian Affairs, Oct. 29, 1964.

¹⁸See Standing Committee on Indian Affairs, Human Rights and Citizenship and Immigration, 1966-67, Report, Vol. 1, May 19, p. 7, and Motion of Mr. McIlraith, Hansard, 1st Session, 27th Parliament, Vol. 3, March 22, 1966, pp. 3032-33.

¹⁹Harold Cardinal, The Unjust Society (Edmonton, Hurtig, 1969), p. 106.

²⁰*Ibid.*, p. 97.

²¹Cairns, *op. cit.*, pp. 361, 367.

²²W. L. Morton, The Kingdom of Canada (Toronto, the McClelland and Stewart, 1969), Second edition, pp. 555-56.

²³Statement by the Prime Minister at a Meeting with the Indian Association of Alberta and the National Indian Brotherhood, Ottawa, June 4, 1970, mimeo, p. 1.

²⁴Interviews, June 1977, Ottawa (Confidential sources).

²⁵Indian Affairs files, 1/24-2/1, Vol. 9. Aug. 3, 1968, telegram from Cardinal to Chretien.

²⁶Indian Affairs files, 1/24-2/1, Vol. 9. Aug. 6, telegram from Cardinal to Chretien.

²⁷Indian Affairs files, 1/24-2-1, Vol. 9.

²⁸*Ibid.*

²⁹*Ibid.*, telegram of Manning to Trudeau, August 8, 1968.

³⁰ Indian Affairs files, 1/24-2-1. Vol. 9. Minutes of the August 23 Meeting.

³¹ Ibid.

³² Public Archives of Canada, R.G. 10 Black Series, Volumes 8476, 8477. File 1/24-2/1, Volumes 1, 7.

³³ Trudeau, Statement, op. cit., pp. 1-2.

³⁴ Chretien, Standing Committee, No. 22, May 13, 1969, p. 752; and Chretien, Hansard, June 25, 1969, pp. 10581-82.

³⁵ Ibid., p. 762.

³⁶ Charles Lindblom, "The Science of Muddling Through," Public Administration Review, Vol. 19, No. 2 (Spring 1959), p. 82.

³⁷ Yehezkel Dror, "Muddling Through--'Science' or 'Inertia'?" Public Administration Review, Vol. 24, No. 3 (September 1954), p. 154.

³⁸ Cardinal, op. cit., p. 131.

³⁹ Audrey Doerr, "Indian Policy," G. B. Doern, S. Wilson, editors, Issues in Canadian Public Policy (Toronto, Macmillan, 1974), p. 52. Note: Doerr cites a "confidential source" as the basis of this information.

⁴⁰ R. M. Connelly, Director General--Program Development, D.I.A.N.D., Ottawa, Minutes of the Department of Indian Affairs and Indian Association of Alberta Workshop, Dec. 19-22, 1976, Jasper, Alberta, p. 1.

⁴¹ This assertion was substantiated in interviews with various officials in Ottawa in June 1977 (Confidential sources).

⁴² Interview June 8, Ottawa (Confidential source).

⁴³ Cardinal, op. cit., p. 130.

⁴⁴ Hansard, July 25, 1969, p. 11636.

⁴⁵ See, for example, the frank statement on this point by the Progressive Conservative MP, Mr. Nesbitt, in Standing Committee on Indian Affairs and Northern Development, Report No. 9, March 19, 1970, p. 23; also note the Progressive Conservative position as articulated by Flora MacDonald on the Aboriginal Rights Debate, Hansard, April 11, 1973, p. 3210.

⁴⁶Trudeau, Statement, op. cit., p. 7.

⁴⁷See the statement of Walter Deiter, NIB Chairman, Standing Committee on Indian Affairs and Northern Development, No. 25, June 4, 1970, p. 25:19; and Doerr, op. cit., p. 43.

⁴⁸J. Chretien, "The Unfinished Tapestry-Indian Policy in Canada," Speech given at Queen's University, March 19, 1971, mimeo, pp. 10-11.

⁴⁹Chretien, Standing Committee, No. 17, May 11, 1977, p. 2.

⁵⁰Ibid.

⁵¹Canada, Statement of the Government of Canada on Indian Policy 1969 (Ottawa, Queen's Printer, 1969), p. 10.

⁵²P.C. 1969-2045, Dec. 19, 1969.

⁵³Letter of the Prime Minister to Lloyd Barber, Aug. 13, 1971; the Treaty 7 Bands were awarded \$250,000--compensation by the government in 1973 in light of the fact that \$200/year Treaty 7 ammunition money had not been paid since 1885.

⁵⁴Interview, June 13, 1977 (Confidential source).

⁵⁵Memorandum to Cabinet, Indian Rights and Treaties Research, June 21, 1972, p. 8.

⁵⁶Memorandum to Cabinet, Developments in Indian Affairs, June 21, 1972, p. 15; see also pp. 18-19.

⁵⁷Ibid., p. 16.

⁵⁸Ibid., pp. 1-14.

⁵⁹Interviews, June 8-13, 1977 (Confidential sources).

⁶⁰Doerr, op. cit., p. 46.

⁶¹Government of Canada, Estimates, for the fiscal year ending March 31, 1965 through to the fiscal year ending March 31, 1976.

⁶²Interviews, June 8-13, 1977 (Confidential sources).

⁶³Interview, June 13 (Confidential source).

⁶⁴The core funding proposals of the Indian organizations have already been mentioned. The native cultural learning centres programme originated with the concept of an "Alberta Indian Education Centre" included in Citizens Plus of the Alberta Indian Chiefs.

⁶⁵Dr. 'Lloyd Barber, On-the-record interview, Calgary, February 17, 1977.

⁶⁶Supreme Court of Canada, Frank Calder et al. v. Attorney General of British Columbia, Judgement, Jan. 31, 1973.

⁶⁷Indian Claims Commission, Indian Claims in Canada (Ottawa, Information Canada, 1975), p. 25.

⁶⁸Interview, June 10, 1977 (Confidential source).

⁶⁹Yukon Native Brotherhood, Together Today for our Children Tomorrow, January, 1973, mimeo.

⁷⁰Barber, op. cit.

⁷¹Ibid.

⁷²Ibid.

⁷³Standing Committee on Indian Affairs and Northern Development, April 4, 1976, Report #11, p. 11:3.

⁷⁴Statement made by the Honorable Jean Chretien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People, Aug. 8, 1973 (Ottawa, Indian Affairs of Northern Development, 1973).

⁷⁵Ibid., pp. 1-2.

⁷⁶Ibid.

⁷⁷"The James Bay and Northern Quebec Agreement," op. cit.

⁷⁸Indian and Northern Affairs, 1975-76 Annual Report (Ottawa, Indian and Northern Affairs, 1976), p. 28.

⁷⁹Ibid.

⁸⁰Interview with Bob Carney, former Acting Alberta Regional Director for the Department of Indian Affairs, April 6, 1977.

⁸¹Ibid.

⁸²Interview with Robin Dodson, former Acting Director General of the DIA's Alberta Region, April 6, 1977.

⁸³Ibid.

⁸⁴Interviews, June 10, 1977 (Confidential sources).

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Ibid.

⁸⁸Peter Self, Administrative Theories and Politics (University of Toronto Press, 1973), p. 94.

⁸⁹Thomas Hockin, The Government of Canada (Toronto, Macmillan, 1976), p. 165.

⁹⁰The Edmonton Journal, December 21, 1971, p. 1.

⁹¹In personal conversation with the author, Cardinal took the position, for example, that the Union of B.C. Chief's refusal in 1975 to take government funding was a battle that they would eventually lose.

⁹²A. Paul Pross, "Pressure Groups: Adaptive Instruments of Political Communication," Pressure Group Behavior in Canadian Politics (Toronto, McGraw-Hill Ryerson, 1975), pp. 1-26.

⁹³Ibid., pp. 14-15.

⁹⁴Richard Simeon, "Studying Public Policy," Canadian Journal of Political Science, ix:4 (December, 1976), pp. 548-580.

⁹⁵Ibid., pp. 559-566.

⁹⁶Ibid., p. 559.

⁹⁷Ibid., p. 561.

⁹⁸Chretien, Standing Committee, No. 22, May 13, 1969, p. 763.

⁹⁹Simeon, op. cit., p. 559.

CHAPTER 3

GOVERNMENT-INDIAN RELATIONS (PART II):

THE "INDIAN RIGHTS PROCESS" 1974-77

Introduction

The "Indian Rights Process" is one of the main watersheds in Indian policy development since 1969, according to the Indian Claims Commissioner of Canada, and is therefore the subject of the chapter.¹ I will examine the policy-making influences of the National Indian Brotherhood and of the Indian Claims Commission on the federal Cabinet, and I will consider the question---does this new Indian Rights Process constitute a real sharing of power or sovereignty by the federal Cabinet with the National Indian Brotherhood?

A. A Wider Context for the Problems of Government- Indian Consultations

Contemporary political scientists often examine the question of sovereignty in Canada by focusing on the divided sovereignty of the provincial and federal governments. In this chapter I propose to examine the question of sovereignty from a different perspective, namely, what are the political limits on the sovereignty of the federal government regarding

the exercise of its responsibilities under Section 91(24) of the BNA Act--"Indian and lands reserved for Indians"?

G. K. Roberts, in his A Dictionary of Political Analysis has usefully defined "sovereignty" as follows:

. . . . By sovereignty is meant the ultimate power possessed by a person or institution in a political community, to decide on political matters (e.g. the establishment of goals, the statement of priorities, the resolution of conflict) and to enforce these decisions once made.

As a philosophic concept, it arose in the sixteenth and seventeenth centuries, as the concept of the nation-state was emerging and political conflicts over the role of the Church in civil affairs were reaching their crux. Philosophers and jurists such as Bodin, Hobbes, Blackstone and Austin were all contributors to the development of the notion.

Yet observably political communities, including states, do exist without possessing the one, single, and identifiable institution that fulfils the conditions of the definition. Federal states are, by definition, states in which the political authority of both the federal and the provincial units is limited; nor can the Constitutional or Supreme Court, charged with interpreting the 'constitutional contract' of federalism, be regarded as sovereign, for it lacks power to enforce its decisions (e.g. USA, West Germany). Even at federal level, it is clear that the President and Congress limit the political power of each other. In Britain, even the prime minister cannot be regarded as possessing the ultimate authority envisaged in the definition. Only by a circular process of broadening the concept to equate it with the fact of political community itself can it be claimed that in every political community there is an ultimate source of political decision and authority.²

In order to relate this definition to our concerns, I will examine the question--has the federal government broadened its concept of sovereignty to include representative Indian leaders in the exercise of the responsibilities for policy-making for "Indians and lands reserved for Indians"?

A second, distinct but related problem is that of the internal responsibility of the Canadian government. Harold Laski, a political theorist, suggests that a theory of sovereignty applied to the modern, sovereign state must be informed by and based on: an historical analysis, a theory of law, and a theory of political organization.³ In this chapter, I will primarily examine this last issue of political organization. Laski suggests that one of the three ways that a modern state can be held internally responsible is: "by the sources of organized consultation with which it is surrounded."⁴ Laski asserts that there is a real urgency to develop this organized consultation:

The first great need of the modern state is adequately to organize institutions of consultation. The weakness of the present system, and one of the real roots of its irresponsibility, is that a government is compelled to consult, not an association which represents the interests affected by some statute, but those only whose protest against its action it chooses to deem important.⁵

The following analysis dealing with the slow evolution towards government-Indian joint policy-making can be viewed within this wider context of the real problems for modern states to remain internally responsible, and the challenge for various associations and individuals in our society to insure that governments are kept responsible. This study will, therefore allow us to consider whether the government is actually willing to give up some of its sovereignty or power in order both that Indian representatives can be directly involved in Indian policy-making, and

that it may be considered internally responsible through an institution of organized consultation.

B. The Rise of Indian Militancy and
its Initial Impact on Cabinet/
National Indian Brotherhood
Relations

On July 8, 1974 the government of Prime Minister Trudeau won a stunning election victory with a strong working majority in the House of Commons. For Trudeau and his Cabinet colleagues the prospects for the future looked bright. Not so for Judd Buchanan, the new Minister of Indian Affairs and Northern Development. Upon taking over his new duties, Buchanan was faced with an armed occupation by 150 Ojibway men, women and children of Anicinabe Park in Kenora, Ontario. These Indians claimed a 1929 agreement earmarked the park for their use, and that it had been illegally transferred to Kenora by the Department of Indian Affairs in 1959.

Buchanan warned the Indians that armed confrontation was "foreign to Canada . . . and I deplore it."⁶ However, Buchanan went on to say that the white man had failed in his dealings with the Indians in the last one hundred years, and that a political settlement of land claims was necessary.⁷

While the Kenora occupation was being resolved, Indian militants in British Columbia blockaded Highway 12 west of Cache Creek to protest housing conditions on the Bonaparte Reserve. Subsequently both the occupation and blockade were ended, but Kenora Indian leader Louis Cameron

and Bonaparte Reserve Chief Ken Basil teamed up to launch an Indian caravan to Ottawa for the opening of Parliament. As the caravan moved across the country, many Indians went along to register their general protest to the conditions of their people in Canada. This action by the "grass roots" Indians was to have a definite political meaning for both the federal Cabinet and the Indian organizations. The caravan represented a challenge to both the Cabinet and organized Indian leadership in that it threw into question the progress that had been made in the aftermath of the White Paper-Red Paper exchange.

The opening of the First Session of the Thirtieth Parliament was the scene of a further confrontation. In a front page story under the caption "Indians Driven off in Parliament Hill Battle," the Globe and Mail stated: "In one of the ugliest scenes on Parliament Hill in many years, The R.C.M.P. yesterday defeated attempts by about 200 Indians to enter the Parliament Buildings."⁸ This Parliament Hill protest of September 30, 1974 sparked a series of events. In the public media, the Prime Minister defended the government's record on Indian matters and expressed the view that he ". . . felt the demonstration had done the Indian cause more harm than good."⁹ On the Indian side, although the demonstrators occupied a federal building, no meetings were arranged with government, because Buchanan expressed his preference to deal with elected Indian representatives.¹⁰

The National Indian Brotherhood Vice President, Clive Linklater, called for an inquiry to examine--who rioted on Parliament Hill, the RCMP or the Indians?--and he requested a meeting between the NIB Executive Council and the Cabinet and Prime Minister.¹¹ This NIB request was picked up by the opposition parties in the House of Commons, and in answer to questions in the house, both Buchanan and Trudeau indicated that they were considering the NIB request seriously.¹² On the government side, the eventual response to hold a meeting with the NIB stemmed from both the governmental dissatisfaction with the general Indian policy vacuum and the initiative of Buchanan, who was concerned to establish better dealings with the Indian people. On the first point, a recent interviewee established that in 1974 the federal Cabinet had concluded that:

Some way was needed to improve the relationship with Indians. Part of this was a change in attitude towards the Indian Associations. Consideration was given to some form of joint or consultative operations.¹³

According to an NIB source, John Turner, the Finance Minister, also aided the NIB in getting a Ministerial meeting organized by interceding on their behalf with the Prime Minister.¹⁴

It is also important to note the continued linkage between the National Indian Brotherhood and the opposition parties. By picking up the reasonable NIB request for a ministerial meeting, the opposition was able to focus public pressure on the government. In effect, the government had three choices: (1) ignore the requests of the NIB and the

caravan; (2) meet with the leaders of the caravan; or (3) meet with the NIB leadership.

On October 9, 1974 a Committee of Cabinet Ministers headed by Judd Buchanan did meet with the National Brotherhood Executive Council. Aside from the presentation of the Alberta Indian's "Red Paper" on June 4, 1970, the only precedent for a meeting of this kind was the July 7, 1972 meeting between George Manuel, the NIB President, and members of the NIB Executive Council and Jean Chretien, the then Minister of Indian Affairs and Northern Development, and some Cabinet colleagues.¹⁵ In contrast to the previous meetings, however, by October 1974 the government was, as we have noted, more serious about implementing some sort of an ongoing consultative mechanism.

In response to the Indian request for a formalized relationship, put forward effectively by both George Manuel and Harold Cardinal, Buchanan responded:

The first thing I can indicate to you is that there was a Cabinet decision two or three years ago to establish this Ad Hoc Committee of Cabinet with the direction that it meet on a regular basis with the Executive of the NIB so that as far as the format is concerned I think the framework is there. This takes me back to Harold's comments vis-a-vis a Secretariat. You felt that it should be outside the NIB and outside the Department. I wasn't really quite clear on what the composite you envisaged was. I agree, if meetings are going to be meaningful obviously there has to be some spadework done . . .¹⁶

The meeting finished with agreements that: further formal Cabinet Committee/NIB meetings would take place; that the NIB President and the DIAND Minister would follow-up and

make concrete the Secretariat proposal; and that the next meeting be tentatively set for February of 1975.¹⁷

Following this important meeting, George Manuel gave the interpretation that the Native People's Caravan should be credited with this new, formalized relationship with Cabinet--"It looks like we made a breakthrough and I think we can credit, to a large degree, the grass-roots people for saying 'enough,' 'enough.'"¹⁸ A government insider was willing to admit that the "blow-up on the hill" was one impetus, but only one impetus of several, for the meeting.¹⁹ Manuel went on to note the importance of breaking through the "gatekeepers role" played by the civil service and getting direct access to Cabinet.²⁰ For his part, Buchanan indicated to the media that the Cabinet and the NIB ". . . would work together so Indians would have more input into decisions affecting their lives."²¹ In a speech to the House of Commons shortly thereafter Buchanan elaborated on the government's position:

. . . The government continues to attach the greatest importance to its relations with native organizations at the national and regional level. It was for this reason that on October 9 a group of Ministers met with members of the executive council of the National Indian Brotherhood to discuss a number of issues of current interest. There will be additional meetings of this kind with the Brotherhood--the next one is scheduled for early February. In the meantime, we are jointly considering the need for supportive services, perhaps in the form of a secretariate, to strengthen this consultative mechanism . . . our initial meeting can be regarded as a prototype and forerunner of further consultations . . .²²

Follow up meetings were held on October 31 and

November 20, 1974 between George Manuel, NIB President, and Harold Cardinal, Indian Association of Alberta President, and Judd Buchanan regarding the Secretariat for this consultative mechanism. These meetings finally resulted in an agreement that a Secretariat would be established and headed up by one full-time person, to be located in the Privy Council Office.²³ The NIB expressed their preference that this person be Norbert Prefontaine, an ADM with National Health and Welfare, but Buchanan recorded the PCO preference that one of "their" staff people head up the Secretariat. As it turned out, Jean Trudeau of the Priorities and Planning section of the PCO was eventually designated by the Privy Council Office as the secretary for this Cabinet/NIB "Consultative Committee." Trudeau was not, however, able to devote full-time efforts to this new Indian secretariat, as he had other PCO duties as well.

At this point, the close working and negotiating relationship between George Manuel, the NIB President, and Harold Cardinal, the IAA President, should be noted. This relationship appears to be due in part to Cardinal's stature in the eyes of both government and Indian leaders. For example, Cardinal's verbal presentations at the Oct. 9, 1974 meeting were taken very seriously. Secondly, Manuel owed Cardinal a few political favors, in that Cardinal had encouraged Manuel to run for the NIB Presidency and subsequently had strongly supported him.

Before proceeding to examine the developments for a joint claims negotiating mechanism, it is important to note several salient factors in the events already examined:

1. The activation of a dormant Ad Hoc Cabinet Committee on Indian matters in response to Indian initiated pressure on government;
2. The implicit challenge presented to both Indian organizations and government by frustrated "grass roots" Indians;
3. The concern of government to find some method of improving Government-Indian consultative relations.

By the time of the next NIB/Cabinet meeting in April, 1975, these early somewhat vague agreements on a consultative mechanism and a secretariat were integrated into a more comprehensive NIB proposal--"The Indian Rights Process."

C. The Indian Organizations and
Dr. Barber Respond to DIAND's
New Office of Claims Negotiations

On July 29, 1974 the Deputy Minister of DIAND, Basil Robinson, wrote to Indian bands and organizations notifying them that a new "office of Claims Negotiation" had been set up.²⁴ Apparently this was done in response to the increasing number of claims submitted to the department. This new office would be headed by P. F. Girard and would report directly to Robinson. It would consider both specific claims based on "the administration of Treaties and Indian legislation" and the comprehensive claims involving "the traditional

use and occupancy of land."²⁵

In response, Dr. Barber initiated a meeting in September of 1974 between his office and the three prairie Indian leaders--Harold Cardinal, IAA; Dave Ahenakew, Federation of Saskatchewan Indians; and Ahab Spence, Manitoba Indian Brotherhood.²⁶ It was agreed at that meeting that the four parties would work together, and that the new "Office of Claims Negotiations" was not an acceptable alternative for resolving Indian claims.

Soon after this meeting, both Cardinal and Ahanakew sent letters to Robinson and Buchanan respectively informing them that this new Office of Claims Negotiation was neither "impartial" nor "independent," and therefore a fair hearing could not be expected.²⁷ Indeed, the Office of Claims Negotiations was organized in such a way that civil servants would be sitting in judgement over past misdeeds of their own department, the Department of Indian Affairs. Although there was an obvious conflict of interest, this type of action was not without federal precedent. Income tax appeals, for example, were originally handled intra-departmentally, before they were eventually included under the jurisdiction of the Federal Court of Canada. Cardinal also wrote to the Prime Minister requesting that:

. . . any policy formulated by your Government on Indian Claims not be finalized until the Statement prepared by Prairie Provinces and Dr. Barber's office has been completed and until we have had an opportunity to discuss its contents with you and your colleagues.²⁸

Later that same fall the Prime Minister and the Deputy Minister of Indian Affairs responded by indicating that they were willing and anxious to receive the recommendations of Indian organizations on the vital question of structures and processes to deal with Indian claims.²⁹

For Dr. Barber his own terms of reference as the Indian Claims Commissioner of Canada included the mandate:

- (b) to recommend measures to be taken by the Government of Canada to provide for the adjudication of claims received that he considers can be demonstrated to require special action in relation to any group or groups of Indians; and
- (c) to advise as to the categories of claims that, in his judgement ought to be referred to the courts or to any special quasijudicial or administrative bodies that he recommends as being desirable for the adjudication of special awards.³⁰

Barber had held off making recommendations on these points until his study and research of various Indian claims was closer to completion. "Similarly, Dr. Barber wished to prepare his recommendations in conjunction with Indian organizations."³¹

Initially, it was agreed by the Indian organizations that they had confidence in Dr. Barber. In their view, Barber had performed the duties of his office effectively and had lent a sympathetic and understanding ear to Indian grievances. This confidence in Dr. Barber allowed the prairie Indian organizations to join forces with him and subsequently set up a "technical" working group, composed of the Executive Director of the Indian Claims Commission, Brian Pratt, along with the lawyers and research directors of the Indian

associations, to explore alternative claims structures.

In the four month period from October 1974 to January 1975, the working group met regularly to discuss and work on an alternative claims structure. The "technical" people took their direction from their respective Indian leaders and from Dr. Barber, and by December, the main themes of a draft proposal were presented and approved by the three prairie Indian organizations and by Dr. Barber. This proposal included the graphic presentation (see Diagram A) and main points which follow:

A. Indian leader-Cabinet Committee

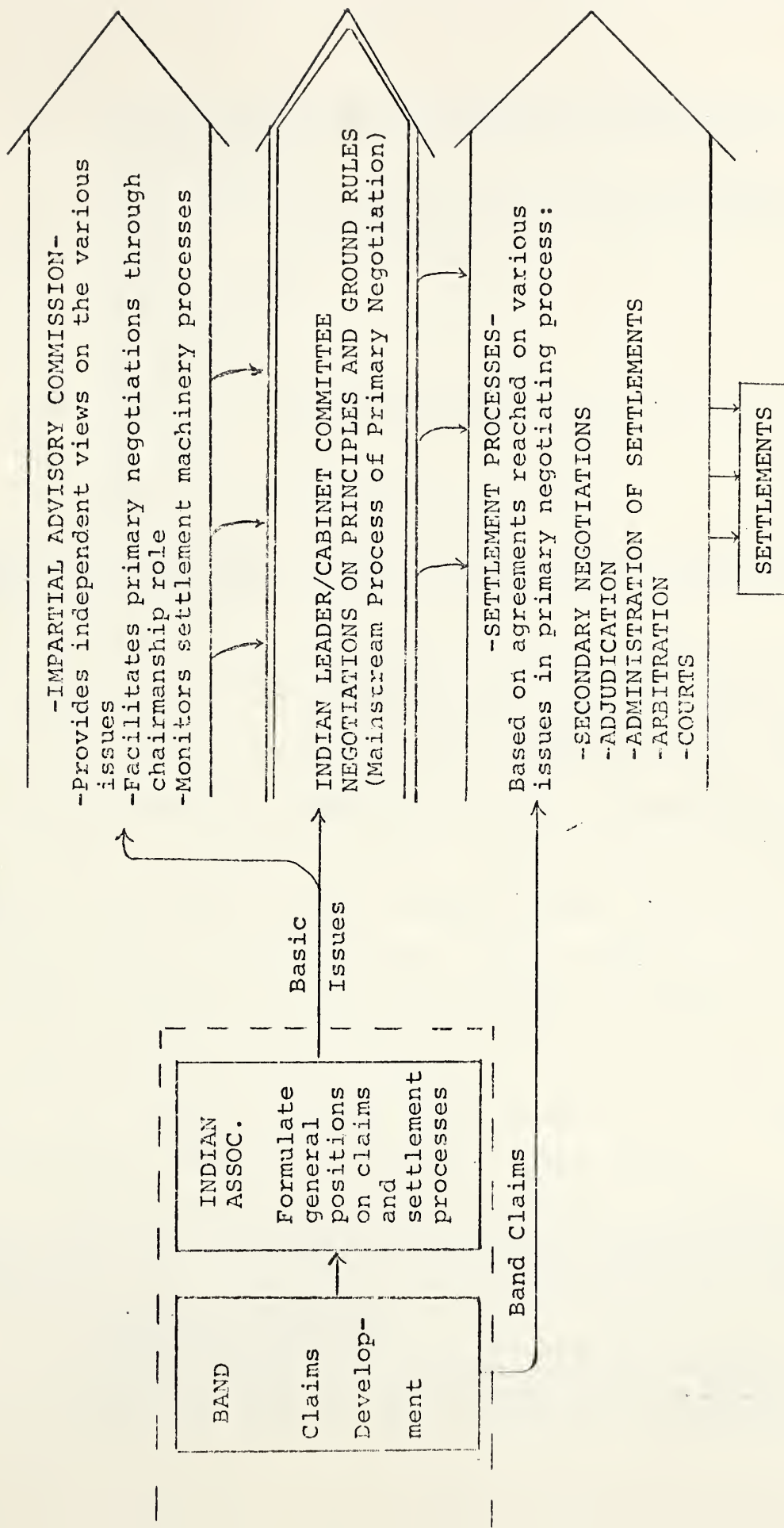
- (i) this negotiation is the preferred, primary process
- (ii) negotiations should be between Indian leaders and a Cabinet Committee
- (iii) negotiations should be on main points of principle and on ground rules for settlement process
- (iv) chairman of the meetings should be the Impartial Advisory Commissioner
- (v) this negotiation will be assisted by one Impartial Advisory Commission
- (vi) settlement process could include:
 - secondary negotiations
 - adjudication
 - administrative mechanisms
 - arbitration
 - courts

B. Impartial Advisory Commission

- (i) Commissioner acceptable to Indians and Government
- (ii) Commissioner would actually facilitate and expedite Indian leader/Cabinet Committee negotiations
- (iii) Impartial Advisory Commission should have the authority to consult, investigate, report and recommend to Indian leader/Cabinet Committee on all Indian claims
- (iv) Commission should have all powers under the Inquiries Act
- (v) Commissioner could deputize part-time Commissioners acceptable to Indians and would hire resource staff to fulfill the above tasks as required

DIAGRAM A

"INDIAN CLAIMS PROCESSES"



- (vi) Commissioner would fund further research and claims development as required by the Indian organizations
- (vii) Commissioner to monitor settlement processes and make recommendations to Indian leaders-Cabinet Committee when necessary

Indian claims . . . involve such basic issues as:

1. Indian status
2. Indian lands
3. Education
4. Health
5. Economic and Social Development
6. Hunting, fishing, trapping, gathering rights
7. Taxation
8. Self government
9. Role of the minister (trustee)
10. Management of Indian monies

Each of these issues involves Indian rights and it is upon the foundation of Indian rights that we hope to build our future.³²

An "Indian Claims Processes" paper, the bare bones of which appears above, was later written by myself, Richard Price, of the IAA at the request of the working group. This paper was presented and approved with minor revisions in January 1975. Already in December 1974, Brian Pratt of the Claims Commission had written a similar paper, which Dr. Barber forwarded to all Ministers, and Dr. Barber in fact presented this paper to a Cabinet Committee in December 1974.³³

By way of further explanation of "settlement processes," the following concepts were advanced in the "Indian Claims Processes" paper of the Indian organizations:

. . . settlement processes are only by way of example and the actual settlement processes for handling claims will have to be established by the joint committee following their agreement on the principles to be used.

- (i) "secondary processes"

Following agreements in principle between the Cabinet Committee and Indian leaders, secondary processes might well be appropriate. Effective delivery system will be required. One process

might be between the Cabinet and the members of the House of Commons over proposed changes in the Indian Act.

(ii) "adjudication"

Adjudication by an impartial tribunal might be where a third party judgment was thought to be desirable and where sufficient broad terms of reference could be obtained.

(iii) "administrative mechanism"

It will, in all likelihood, be necessary to have the details of agreed to principles administered effectively through a government agency.

(iv) "arbitration"

The normal processes of arbitration utilized in management-labor type disputes might well prove to be a useful tool in resolving issues which have become deadlocked.

(v) "courts"

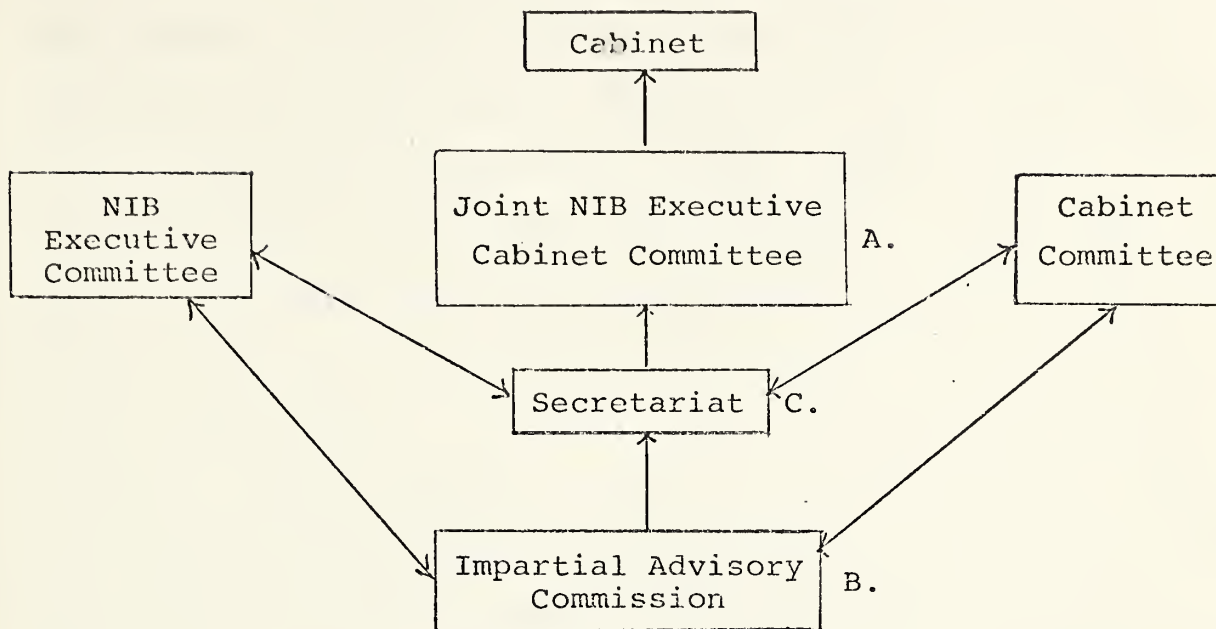
It can be anticipated that both sides will want to leave open the litigation route if all else fails.

2. Once the settlement processes are established, bands or their representatives could then take their claims directly to the appropriate body.³⁴

Meanwhile, in preparation for a meeting with the Executive Council of the National Indian Brotherhood, Harold Cardinal became concerned as to how these "Indian Claims Processes" related to the early negotiations on the formal NIB/Cabinet meetings and a Secretariat. An IAA "think tank" was called for Hinton, Alberta on January 15, 1975, and George Manuel and Clive Linklater of the NIB were invited to attend. Questions were raised as to whether the Indian leader/Cabinet Committee referred to in the "Indian Claims Process" paper was the same as the NIB/Cabinet Committee already apparently established. Also, the "Indian Claims Process" had not included a Secretariat. After much discussion, the following model (see Diagram B) and explanatory paragraphs were inserted in the "Indian Claims Process" Paper:

DIAGRAM B

"INDIAN CLAIMS PROCESSES" (REVISED)



Inasmuch as agreement has already been reached between the National Indian Brotherhood and the Federal Government for the establishment of a joint National Indian Brotherhood Executive Council-Cabinet Committee to act as a forum for dialogue between the two groups on important Indian issues, it is felt that the proposed rights processes can be handled within that Joint Committee. The establishment of principles and processes with regard to Indian rights, claims and grievances is perhaps the most important issue facing Indian and Government leaders and must be handled at the highest possible level.

C. Secretariat

As we see it the function of the Secretariat would be to facilitate deliberations upon agreed agenda items. The Secretariat would receive papers from both Government and Indians, summarize the various positions and focus the issues to be discussed by noting the points of agreement and disagreement. In other words, the Secretariat would not recommend a position, but would present pros and cons of issues to be discussed. The actual decision would only be made at the Indian leader-Cabinet Committee.³⁵

Unfortunately the prairie Indian organizations were

unable to get together again before the next scheduled NIB meeting, and so these changes were not discussed with the FSI and the MIB. On January 28th, 29th and 30th, 1975, the National Indian Brotherhood discussed the work that had been done on both the "Secretariat" and the "Indian Claims Processes" paper of the IAA, FSI and MIB.³⁶ At this NIB meeting it became clear that the provincial Indian organizations needed more time to study the "Indian Claims Processes" paper before making a decision. It was, therefore, decided to hold a special Executive Council meeting on Feb. 17, 1975 to discuss this paper and an NIB position on the Indian Act.³⁷ The Union of British Columbia Chiefs expressed the main objections to the prairie Indian proposals, partly on the grounds that regions or member organizations were using the umbrella of the NIB for their own ends, and partly on the basis that they needed more time to discuss this paper with the Union of B.C. Chiefs Executive.³⁸ At this time, it also became obvious that the Federation of Saskatchewan Indian's President, Dave Ahanakew had grave concerns about the "Secretariat." He was primarily concerned that the Barber Commission and its sequel the "Impartial Advisory Commission" would be lost and that Girard's Office of Claims Negotiation might somehow be amalgamated with the "Secretariat."³⁹ This position of Ahanakew is extremely significant, in that it illustrates the close trust relationship between the Barber Commission, which was based in Saskatoon,

and the Saskatchewan Indian leadership. Other Indian organizations, such as the Union of B.C. Chiefs and the Indians of Quebec Association, were much less enthusiastic about Dr. Barber and the fact that he might be asked to head up the new "Impartial Advisory Commission." This negative position on Barber was partly due to the fact that Barber was still associated in the minds of some Indians with the 1969 White Paper.

The role of the "Secretariat" was extensively discussed on January 29 when Jean Trudeau of the PCO spent the morning discussing his perception of the Secretariat with members of the National Indian Brotherhood Executive Council. In fact Jean Trudeau viewed his role in a very similar way to the Secretariat that was described and included at the last minute in the prairie Indian proposal. At one stage, J. Trudeau threw some light on the government departments responsible for Indian claims policy in the following exchange with Harold Cardinal:

Harold Cardinal, Alta, asked if all parties concerned with the meeting had been approached to submit papers on claims besides Indian Affairs.

Jean Trudeau, PCO, stated certainly Justice and Indian Affairs on claims on the Indian Act⁴⁰

This involvement of both the departments of Indian Affairs and Justice in the development of the government's position on Indian claims policy has been confirmed by recent interviews.⁴¹ In any event, the first meeting between Jean Trudeau of the PCO's "Indian" Secretariat and the National

Indian Brotherhood allowed for a better understanding of the positions of both sides, and Trudeau gained a certain credibility with the Indian leadership.

At the subsequent, NIB meeting on Feb. 17, 1975, the National Indian Brotherhood discussed, amended and eventually approved the "Indian Claims Process" paper. I attended this meeting as Harold Cardinal's delegate and found that the Union of B.C. Chiefs again presented the main roadblocks to the proposal. Eventually, however, the document was examined clause by clause and approved with the prairie Indian proposal largely intact. The one main change was that all references in the document to "claims" were changed to "rights," hence the new name of "Indian Rights Processes." Secondly, on the request of the Union of B.C. Chiefs, all reference to specific classes of Indian claims were deleted from the document because B.C. believed that these specific references did not adequately reflect an understanding of aboriginal rights.⁴² It should also be noted that the Yukon and N.W.T. Indian Brotherhoods did not attend the NIB meetings on these matters. These two Indian organizations along with the Union of B.C. Chiefs were, in fact, negotiating or ready to negotiate directly with the federal government representatives, whether Girard's Office of Claims Negotiations or a specifically designated federal negotiator. Hence, the "Indian Rights Process" was soon seen to apply primarily to the treaty areas, especially the prairies and

Ontario, and to a lesser extent, southern Quebec and the Maritimes. As we have seen from the Aboriginal Rights Statement of the government in 1973, the aboriginal rights claims of southern Quebec and the Maritimes are regarded as less established than the northern Quebec, B.C. and Yukon Indian land claims. The N.W.T. Indians were in the unique situation of having unimplemented treaties, which both sides viewed in radically different ways.

The National Indian Brotherhood included the following resolutions, which were drafted by Saskatchewan, Quebec and B.C. Indian delegates, in the introduction of the Indian Rights Processes paper:

Whereas the Federal Government has special responsibility for Indians and Indian lands as defined by the British North America Act, the treaties and Aboriginal Rights;

Whereas an agreement has already been reached between the National Indian Brotherhood and the Federal Government for the establishment of a joint National Indian Brotherhood Executive Council-Cabinet Committee to act as a forum for dialogue between the two elected governments on important Indian issues so that Indian Rights can be handled jointly;

Whereas the present framework as represented by the office of Mr. P. F. Girard's claims mechanism is totally unacceptable and inadequate; and

Whereas it's agreed that the process of settlement is as important as settlement in itself;

Be it resolved that the structure of Indian Rights Processes through the office of the Secretariat functioning under the joint National Indian Brotherhood executive-Cabinet Committee be accepted;

Be it further resolved that the joint National Indian Brotherhood Executive and Cabinet Committee agree to basic principles and guidelines for the process.⁴³

The National Indian Brotherhood was now ready to forward its proposal to the government for the scheduled joint meeting.

In retrospect, three main interpretations may be gleaned from this section. Firstly, we have noted the important facilitating role performed by the Indian Claims Commission in bringing prairie Indian organizations together to respond to a government policy initiative. Secondly, it is clear that both the prairie Indian support and a well-developed position paper were essential before the National Indian Brotherhood would agree to a new Indian claims process. Regional groups within the NIB can therefore have a significant impact on the NIB policy. Thirdly, we have noted some of the difficulty of reaching a consensus within the National Indian Brotherhood. This difficulty related to perceived differences of position, especially between aboriginal rights Indian organizations, and the treaty Indian organizations. Some aboriginal rights Indian organizations had gained governmental recognition for their claims and were either negotiating or ready to negotiate directly with federal representatives. Thus they did not feel so much the need for a new Indian Rights Process. However, the other Indian organizations had either non-recognized aboriginal rights claims (southern Quebec and the Maritimes) or had difficulty with the government's interpretation of "lawful obligations" vis-a-vis their treaty-based land claims, and thus they perceived very much the necessity of a new forum--the "Indian Rights Process"---whereby new government policy on their rights and claims could be jointly developed.

D. Negotiations for the "Indian Rights Processes" and the April 1975 National Indian Brotherhood/Cabinet Meeting

The centre of attention for the "Indian Rights Processes" proposal now shifted to the necessity of convincing the Prime Minister, the Minister of Indian Affairs and Northern Development and their top officials, and the other Cabinet ministers of the appropriateness of this new model of negotiations. What was being requested differed from the access to Cabinet that had been enjoyed by certain other pressure groups, such as the Canadian Labor Congress or the Canadian Manufacturer's Association. These groups normally presented a brief to Cabinet and then had discussions with Cabinet ministers at an annual meeting. (It is, however, recognized that the Canadian Labor Congress is presently seeking a new policy-making arrangement with the government.) The National Indian Brotherhood was calling for a special unique relationship whereby they would be negotiating policy matters with an existing Cabinet committee. Indeed, the NIB pushed for a commitment that policy agreements hammered out at the "Indian leader/Cabinet Committee" level would be "forwarded to the full Cabinet for ratification."⁴⁴

If we refer back to our initial statement of the problem, the National Indian Brotherhood was requesting a type of sovereignty-sharing or power-sharing relationship with the federal Cabinet vis-a-vis questions of Indian rights and claims and Indian policy generally. The proposed joint

NIB/Cabinet Committee goes beyond an "institution of consultation" in that negotiations on principles and policy were to be hammered between the NIB and the Cabinet Committee. Further, the substance of these negotiated agreements would then be respected by the full Cabinet. While it would still be technically correct that the federal Cabinet would retain the ultimate authority and sovereignty, this new policy-making forum between Indian leaders and Cabinet Ministers would be the de facto centre for the real decision-making power. Moreover, this change in the constellation of power would also effect the privileged position of access of certain top federal civil servants who, in the normal course of events, directly advised their Ministers, and indirectly the federal Cabinet on Indian policy matters. In early 1975, it remained very much an open question if the federal Cabinet would really agree to vest such power in the joint NIB/Cabinet Committee.

In this connection, the heart of the NIB proposal for an "Indian Rights Processes" is contained in the following two paragraphs:

Negotiations should be between Indian leaders and a Cabinet Committee

Negotiations should be carried out at this high level, because it allows both Indian and Government to deal with the people who have the real authority to make decisions. Further, the Indian rights basically involve fundamental questions of Indian policy, whether it be Indian lands or Indian education or other Indian rights, and therefore it is entirely appropriate that negotiations take place between Indian leaders and the Cabinet. There is the acceptance of the concept of Cabinet Committee in basic

Indian issues, and this has recently been activated after lying dormant for several years.

Not only are we dealing with fundamental questions of policy but resolution of Indian rights will likely involve a number of different departments (e.g. Health and Welfare, Manpower and Immigration, Regional Development, etc.). Moreover, the Minister of Indian Affairs must take the role of the Indians' trustee as these issues are being discussed. For these reasons, it is imperative that a Cabinet Committee negotiate agreements in principle with Indian leaders.⁴⁵

The background thinking of Indian organizations on these questions is also important to understand. Firstly, the experience up to that time had been that Indian leaders were in effect negotiating with civil servants, who always had to "run back or call back" to Ottawa to get Ministerial, or more frequently, Cabinet approval for an Indian claim agreement. While the necessity of Cabinet approval is not so surprising, it, nevertheless, left Indian leaders with the impression that they were not dealing with the real decision-makers and hence their frustration with the claim process was increased. Secondly, Indian leaders had been concerned for some time to negotiate with the Cabinet, partly because a number of departments were involved in Indian matters, and partly because they wanted to get around the civil servants of the Departments of Indian Affairs and Justice and to deal directly with their political masters. Thirdly, the Indians felt that the Minister of Indian Affairs should as their trustee be the advocate of Indian interests with his Cabinet colleagues. It was unacceptable to Indians that their Minister should ever be placed in an adversary

position to Indians. The Indians hoped that Buchanan would become an Indian advocate, much as Whelan was a former advocate. The practical and political difficulty of having the Minister responsible for Indian Affairs always act as an Indian advocate was, however, that from time to time his Cabinet colleagues might well instruct him to take a hard-line against a position of the Indian leaders, and the Minister would be bound to carry out this government position. This third part of the NIB position appeared, therefore, at least to some degree, to be wishful thinking.

As events unfolded, the Indian Claims Commissioner, Dr. Lloyd Barber, emerged as a key figure in the preliminary discussions and negotiations before the NIB/Cabinet leader meeting, which had been rescheduled from February to April of 1975. Barber presented what was, in effect, a common Indian Claims Commission/prairie Indian proposal on Indian claims processes. Barber's method of operating placed much stress on informal, behind-the-scenes negotiations with key ministers, their deputies and Cabinet committees. In a recent interview Barber related to me his experiences before the April 1975 meeting.⁴⁶ Barber reported directly to the Prime Minister, so his exploratory first meetings were with him. There were also discussions directly with a Cabinet committee on two different occasions. The first meeting in December, 1975 was hostile to the "Indian Rights (Claims) Processes."⁴⁷ Gordon Robertson, PCO Cabinet Secretary for

Federal-Provincial Relations, later commented to Barber: "I don't like your proposal, but I haven't got a better alternative."⁴⁸ However, Jack Austin, of the Prime Minister's Office, was enthusiastically behind the new proposed process.⁴⁹ Another source has indicated that there was a "genuine concern in both the PMO and the PCO to see Indian issues fairly resolved" and this probably could be ultimately related to the Prime Minister's personal involvement and interest in native issues.⁵⁰ Within the PCO, there was apparently a certain ambivalence to the proposal, on the one hand, "a willingness to go," and, on the other, a question of "what the hell are we getting into."⁵¹

One of Barber's toughest assignments was to convince Judd Buchanan and his top officials of the necessity for the Indian leader/Cabinet Committee process. Departmental officials were suspicious of this "end run" around DIA and had prepared their own suggestions for claims processes in a paper titled "Claims Process," which was prepared for consideration of the upcoming Joint Committee meeting.⁵² The objective of the DIA paper was to present:

. . . alternative approaches which together with proposals that may be submitted by the N.I.B. might be discussed at the Cabinet Committee/N.I.B. joint meeting with a view to arriving at some consensus on one or more workable claims procedures.⁵³

The alternatives presented by DIAND included:

1. Continue the Present Process
2. Use the Courts
3. Prairie Indians Proposal (as interpreted by Dr. Barber)

4. Establish a Separate and Independent body for dealing with specific claims⁵⁴

DIA officials concluded their paper by maintaining that the present process was "adequate" but suggested that:

For the bulk of specific claims what the Cabinet/N.I.B. Joint Committee might seek to achieve is a claims process which is expeditious and flexible, taking into account a whole range of alternatives. Agreement should be reached as to how the process would actually work. Because of the complexity of the issues it might be desirable to set up a joint working group or groups to examine in some detail the alternatives and, after consultation with a cross section of claimant bands, make a recommendation to the Cabinet/N.I.B. Committee (emphasis mine).⁵⁵

In another section of the conclusion, it was stated:

The aim in discussing the claims process in the Cabinet-N.I.B. Committee should be to get better understanding of what is involved and, if possible, agreement on how the claims process might be approached. The Committee, however, should not become directly involved in the process of hearing and deciding claims.⁵⁶

DIAND officials wished, therefore, to keep all the options open and tended to opt for more "legal" as opposed to "negotiating" methods of resolving these issues (for example, alternatives 1, 2, and 4 all involve legal or quasi-legal processes). This position finds its roots, in the 1969 White Paper policy, which referred to honoring "lawful obligations," and was affirmed in the 1973 statement on aboriginal and treaty rights. The main source in government of this lawful obligation policy has been the Department of Justice. The Justice Department has apparently warned the government and the Department of Indian Affairs of the financial and operational dangers of moving away from this

lawful obligation policy vis-a-vis treaties and land surrender claims.⁵⁷ For example, if the government changed its view on lawful obligation and developed an open-ended policy on land claims then as one official put the issue: "where do you stop?"--"where do you put out the fire?"⁵⁹ The Department of Indian Affairs appeared to forthrightly recognize that the lawful obligation policy sheltered some past, immoral land dealings of the department, yet it was uncertain as to how to move off this position without having every treaty and land surrender transaction in the country thrown out.⁵⁹ Hence there were officials in the Department of Indian Affairs, who saw the "Indian Right Process" in a positive way, in that it provided a mechanism for negotiating mutually acceptable principles to overcome this land claims policy impasse.⁶⁰

On the other hand, some officials in the Department of Indian Affairs were inclined to view the "Indian Rights Process" negatively or with suspicion. According to Barber, some officials disliked the proposed Indian Claims Processes" on three grounds:

1. It would set a precedent, and other organizations such as the CLC would want similar treatment;
2. It appeared to be an end run around the department; and;
3. It was not "neat and tidy" with fixed guidelines and rules.⁶¹

One point is certainly clear from earlier statements by George

Manuel, namely that the NIB wished to get around the "gate-keeping" civil servants and have direct access to the Cabinet. It was natural then, for the DIA civil servants to be sensitive on these points and hesitant to share their own policy-making influence. Another related factor was the tense climate of Indian-IAA relations in the winter of 1974-75.⁶² Judd Buchanan was regarded as a "hard-liner" by many Indian leaders, and similarly many Indians were "restive" with the style of Indian affairs ADM Peter Lesaux. With this tense climate, it is little wonder that some DIA officials felt "under the gun" of various Indian demands, and therefore reacted to defend their own Office of Claims Negotiation and negatively to the proposals for an Indian claims or rights process.

However, as an important third party, Lloyd Barber was able to tip the balance in favor of the Claims Commission/prairie Indian proposal. According to Barber, Judd Buchanan initially disliked the NIB proposal, but one evening Dr. Barber and Deputy Minister Kroeger teamed up to convince Buchanan of the merits of the proposal.⁶³ Apparently, Buchanan was still not completely convinced until a few minutes before a scheduled meeting between Barber, Buchanan and Trudeau. At the last minute he decided to agree "in principle" with the NIB proposal.⁶⁴ Trudeau had been briefed to expect a disagreement between his Commissioner and his Minister and was relieved to see that there was no disagreement, and thereby no need for him to arbitrate and make a choice of alternatives.⁶⁵ An

informed source pointed to the additional factor that Trudeau had been given advice by a top PCO official that the "Indian Rights (Claims) Process" should be accepted.⁶⁶ The ultimate hand of the Prime Minister in deciding fundamental Indian policy matters is clear once again, and this seems to relate to his personal concern and attention into these questions. All of these discussions led up to a second Cabinet Committee meeting, at which time the Indian Claims Processes concept was approved in principle.⁶⁷

On March 25, 1975, the Privy Council Officer, Jean Trudeau, circulated a document titled "Note to Members of the 'Consultative Committee' (Cabinet/N.I.B.)," which gave notice of the April 14 meeting and summarized the NIB and DIAND positions on the Indian Rights (Claims) Process. As we have seen, however, the ongoing negotiations between Dr. Barber and members of the government had tipped the balance in favor of the Indian Claims Process proposal. The Prime Minister's opening remarks at the April 14 meeting signalled the government position:

. . . this is a new forum. It is the first time we are meeting formally in this way and believe it or not it is a sign of progress . . . It means we are really getting down to business. As of now we have made briefs and speeches to each other, today with your documents and the various subjects we are going to discuss, getting down to the more difficult aspect of implementing the objectives we wish to achieve and this meeting will be different. I think it will be more business like than the earlier ones . . . I prefer to let Marc Lalonde, the Chairman, deal with this in a business-like way . . . I won't be around to draw any conclusions, we will proceed exactly as we do in Cabinet when we have a group of ministers who are most concerned directly, knowledgeable about a special field and then they come to a full Cabinet.

The Chairman reports what went on and what conclusions were reached and what steps must be taken which will take time, and it may be frustrating but we find that as Ministers, and I am sure you are finding that as representatives and delegates of Indian people that it is easier to take general positions than to work out precise solutions on a basic and elementary reality as the Indian Act . . . we have begun to realize that it is more difficult to change a social reality, which has lasted for generations, than it is to take theoretical positions.⁶⁸

The Prime Minister's remarks were later picked up and carried further by Marc Lalonde, the Chairman of the meeting:

I have been asked to Chair this meeting as Chairman of the Cabinet Committee and I think the fact that this is more or less considered as a Cabinet Committee, should point out the importance the government attaches to our discussions. I think--I am sure, as a matter of fact, that this is probably the only Cabinet Committee that meets with people who are not members of the government as such and I think I should once more underline the importance that is being attached by the government to our meeting.⁶⁹

Here should be noted the unique and new aspects of this meeting. While in the previous meeting, the Minister of DIAND chaired an Ad Hoc Committee of Cabinet, this time Marc Lalonde, the Chairman of the Social Policy Committee of Cabinet, was heading up the government side and chairing the meeting. Secondly, the Prime Minister's remarks clearly indicate that general, theoretical positions by both sides should be a thing of the past, and that both sides should get down to resolving the business at hand, namely, improving a complex social reality. Thirdly, the government had effectively agreed to share some of its power of Indian policy-making. The actual degree of power-sharing still had to involve further joint negotiations.

The discussion over the Indian Rights Process initially involved points of clarification on both sides. The NIB did not like references in the DIAND paper referring to "Prairie Indian proposal," when their proposal was in fact an NIB position. Similarly, they were concerned about the use of "lawful obligations" vis-a-vis claims. On the latter point, Lalonde assured the Indians present that:

. . . the government intends to deal fairly and justly with the Indian people. The thing is to get something that is capable of some sort of precise definition so we know what we are looking at and dealing with.⁷⁰

On the government side, Buchanan took pains to point out to the Indians that agreements reached at this level were not simply "ratified" by Cabinet, but that the ultimate right of decision rested with Cabinet.⁷¹ This position of the government was modified in subsequent joint meetings. At a crucial point in the discussion, Cardinal said to Buchanan: "I assume by moving into the specifics of the proposal that is your way of saying that we agree with the process." Buchanan answered: "We are prepared to go along with this but it needs some refining."⁷²

It was later mutually agreed to set up a smaller sub-committee of delegated officials to work out terms of reference for the Impartial Advisory Commission and refine the Indian Rights Process and report back to the next meeting of the NIB/Cabinet Committee. The meeting then proceeded to look at other items on the agenda, namely, Indian Act Revision and a Strategy for Economic Development and Education.

In reflecting on the main points in order of priority

of this section, we should note:

- (a) the significant breakthrough of Indian representatives by way of this process for direct discussion with the Social Policy Committee of Cabinet, and therefore the implicit sharing of power by the federal Cabinet with a representative pressure group;
- (b) the critical role of influencing government policy performed by the Indian Claims Commissioner, Dr. Barber;
- (c) the ultimate hand of the Prime Minister in Indian policy matters;
- (d) the high priority and urgency of Indian policy development that is implicit in the government taking this bold policy initiative; and
- (e) the fact that the Indian Claims Commission/Prairie Indian proposal emerged through much critical examination as a superior alternative for handling Indian rights and claims.

E. The Evolving "Indian Rights Process"
through the Joint Working Group and
the Final Approvals of a Refined
"Indian Rights Process"

There was a quick follow-up to the NIB/Cabinet meeting. On April 30, 1975 a meeting was held in Edmonton, with the main actors being Cardinal and Linklater of the NIB, Kroeger of DIAND and Barber of the ICC. At that time it was agreed that a working group on the Indian rights process would be struck. This group was mandated to develop a more

precise statement on the Indian Rights Process, i.e., to refine the process and come up with terms of reference for the Advisory Commission. This technical working group of resource people would eventually make a report to a "policy or steering committee" composed of Manuel, Cardinal and Rickert (Ontario) of the NIB and Buchanan, Lang (Justice) and Lalonde (Health and Welfare) of the Government. On an ongoing basis, the work group members would report to their respective political masters.

As the work group got underway and formulated a work plan, the representatives included:

- B. Pratt--Executive Director, Indian Claims Commission
- J. Trudeau--Secretariat
- G. Murray--(ADM) DIAND
- B. Strayer--(ADM) Justice
- A. Midgley--DIAND
- J. Mabbut--Justice
- C. Linklater--NIB
- R. Young--NIB/IAA
- R. Price--NIB/IAA
- L. Hopkins--NIB/Association of Iroquois and Allied Indians
- N. Zlotkin--NIB/Treaty No. 9.

Brian Pratt was designated as Chairman, and Jean Trudeau became Secretary. The membership of this working group remained relatively stable, although NIB-Ontario representatives kept changing, and the Government eventually replaced

Strayer with V. Sommerfield.

In the course of their work over a six month period, the joint work group met four times (May 21, June 16, July 16 and October 8).⁷³ After the initial problems of adjusting to the various personalities involved, the committee got down to discussing and developing a workable process. At first government officials played things very "close to the vest" and waited for Indian officials to make suggestions. On the other hand, NIB representatives tended, initially, to be tied rigidly to their "Indian Rights Process" proposal. With the NIB proposal acting as the basis for discussion, both sides were able, by the time of the third meeting (July, Edmonton), through the able assistance of Chairman Brian Pratt, to get their thoughts down on paper. What had emerged in the work group was a creative process, although points of difficulty did remain.

One main point of difficulty was the granting of general, as opposed to specific, ad hoc powers under the Inquiries Act to an Advisory Commission or Panel of Inquirers. The Department of Justice took a hard-line and advocated the latter position on that issue.⁷⁴ In part, this "Justice" position seemed to stem from the view that the Barber Commission had been granted too general, sweeping powers under the Inquiries Act, and there was apprehension in Ottawa about the conduct of the Berger Commission, which held similar Inquiries Act powers. In fact, both Barber and

Berger had simply held the basic powers under the Inquiries Act but the "Justice" concern was that this was not necessary in this type of negotiating process. This question of the Inquiries Act power remained unresolved and was returned to the December 1975 meeting of the NIB/Cabinet Committee as an outstanding item. On that matter, the NIB was particularly concerned to preserve the testimony of elderly Indians through the use of the Inquiries Act power. The NIB believed that elders testimony taken under the Inquiries Act would have a greater legal validity. Here we can observe the lasting impact of the government's legal obligation policy on claims.

Nevertheless, the real crunch for the working group came at their October 8 meeting following the NIB General Assembly at Truro, Nova Scotia in August of 1975. At the NIB Assembly, Robert Young, the IAA lawyer, worked out a modified position paper with Harold Cardinal and Fred Kelly, the new Ontario representative for the NIB Indian Rights policy committee. It contained most of the elements of the Joint Working Group's paper, but contained new emphasis and highlighted points of concern. A central concern for Indian leaders was that the "Joint Committee" (NIB/Cabinet) receive a prominent status, and not have its power diluted. The background to this issue was the government officials on the joint work group who had insisted that:

- Except for urgent matters, all items submitted to Cabinet are first considered by a Cabinet Committee;
- Membership of Cabinet Committees is restricted to Ministers.⁷⁵

Joint work group negotiations had produced an agreement, however, that if the Cabinet disagreed with the Joint Committee recommendations, then the item would go back to the joint work group for further consideration. This effectively meant that a Cabinet decision was not the final word on a particular matter, and that the subject could still be open for further discussions and negotiations. The "Truro paper" also placed more emphasis on the proposed "Joint Sub-Committee on Indian Rights and Claims." This is a policy committee composed of three NIB leaders (Manuel, Cardinal, Kelley) and the DIAND Minister, the Justice Minister, and the Chairman of the Joint Committee. They would meet regularly and as required. Gradually NIB leaders and their advisors had come to the realization that the group of Cabinet Ministers who could meet more regularly was needed. The Truro document also de-emphasized to some extent the role of the proposed "Canadian Indian Rights Commission," in that it made the CJRC responsible to the Sub-Committee on "Indian Rights and Claims" instead of the Joint Committee. In addition a clause was left out of the Truro document:

The Commission will provide assistance in defining the items placed on the agenda and will convene, coordinate and chair each joint working group.⁷⁶

To some extent, this probably reflected mixed feelings on the part of Indian leaders vis-a-vis the strong proposed role for the CIRC in the new scheme of things.

Bob Young of the NIB suggested that the working group incorporate the elements of the Truro paper upon which

agreement was possible into the earlier joint working paper, because it reflected the up-to-date thinking of key Indian leaders. Where agreement was impossible the differences should be set out in writing. Barry Strayer, of the Justice Department, reacted quite negatively to parts of the Truro paper--". . . Government officials wish to interpose a Cabinet Committee between the Executive Council and the Cabinet"--and to the way the joint working group's earlier paper had been handled, especially that changes had been made outside the joint working group and then a type of ultimatum presented to the work group. Importantly, Geoff Murray of Indian Affairs took the initiative and suggested that the working group try to incorporate as many of the Truro suggestions as possible, because that document was acceptable to Indian leaders and the changes recommended were not that substantive. This action by Murray enabled the joint working group's report drafting to proceed, and a report was agreed upon that could be presented to what had become, in effect, the "Joint Sub-Committee on Indian Rights and Claims."

Following a successful Joint Sub-Committee meeting, the Joint NIB/Cabinet Committee met on December 12, 1975 in Ottawa. This meeting approved the joint working group's report with minor modifications, for example, certain issues such as the appointment of Commissioners could be decided by the Joint Sub-Committee rather than the full Joint Committee. In that regard, Cardinal took a certain initiative to insure

that urgent matters were delegated to the Joint Sub-Committee. Both government and the Indian leaders were definitely satisfied with the refined Indian Rights Process, which had found mutual agreement. Agreements at the joint working group level, at the Joint Sub-Committee level and at the Joint Committee level pointed already in a hopeful direction for the success of the process. In his opening remarks to the Joint Committee, George Manuel spoke of his hopes for the new Indian/Government relationship:

Today's deliberations give new meaning to the claims of our people and allow you, as representatives of Canada, to discuss and decide with us a new relationship. The basis for this relationship, like any lasting relationship, must be founded on trust and honesty. It is very important that the principle underlying this relationship should be stated and understood.⁷⁷

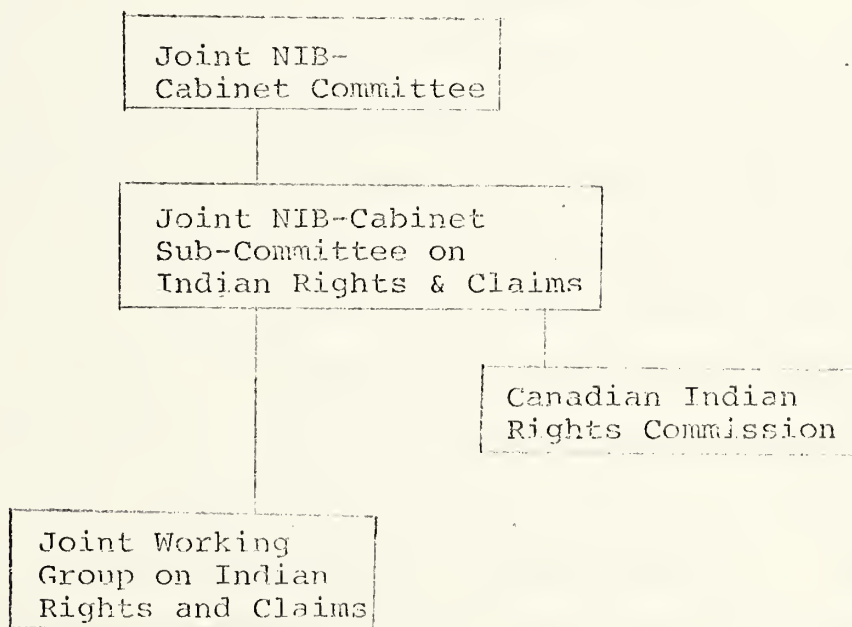
Matters had now come the full circle, for in 1970 Prime Minister Trudeau suggested to Indian leaders that ". . . in order to reach some kind of dialogue and exchange we have to trust each other a little bit, . . ."⁷⁸ While some cynical observers may scoff at the word "trust" being used vis-a-vis a relationship between seasoned politicians, recent interviews have attested to the importance of this kind of relationship between the few key actors, for example, those Ministers and Indian leaders on the Joint Sub-Committee for Indian rights and claims.⁷⁹

Apparently the faith that Indian leaders had in the Indian Rights Process was justified, for on February 9, 1976 Marc Lalonde informed George Manuel by letter that the

federal Cabinet had approved the "Report of the Joint Cabinet/National Indian Brotherhood Committee" (December 12, 1975) with only minor amendments. In light of the importance of this Cabinet approval of the Indian Rights Process, these documents are appended to this paper (see Appendix 5). This provides a concrete example of Cabinet de facto sharing its policy-making power with Indian representatives. In terms of a graphic presentation of the agreed upon structure, the following diagram is appropriate:

DIAGRAM C

THE INDIAN RIGHTS PROCESS STRUCTURE



The joint working group was called together again in the spring and early summer of 1976 to resolve two matters:

1. the content of the Order-in-Council establishing the Canadian Indian Rights Commission; and

2. the outstanding Inquiries Act issues.⁸⁰

At the same time this work was going on, Judd Buchanan wrote to all the provincial premiers to inform them of the new Indian Rights Process (see Appendix 6).

In order to break the impasse on the Inquiries Act Question, Ken Norman, legal counsel for the Indian Claims Commission, wrote to Professor Neil Brooks of Osgoode Hall Law School for his opinion on the following question:

Is the testimony of an elderly Indian person, now unable to testify due to death or illness, taken by a Commissioner under the Inquiries Act, R.S. C.154, and which had been subject to cross examination by Counsel for the Federal Crown, likely to be admitted into evidence by a Federal Court judge in a suit involving an Indian claim against the Federal Crown?⁸¹

The opinion of Brooks came back affirmative to this question, and this effectively affirmed the NIB position on this controversial question. After several rounds of discussion on the Inquiries Act issue, lawyers, Barry Strayer and Robert Young, the real adversaries on this issue, moved closer to an agreement. However, it took several months of corresponding between Young, Pratt, and Sommerfield (Strayer's successor) before a final agreement was reached at the end of September 1976 vis-a-vis the Inquiries Act Order-in-Council. This Order-in-Council together with the Order-in-Council establishing the Canadian Indian Rights Commission are appended in that they represent the completed Indian Rights Process framework (see Appendix 7).

The second Order-in-Council also took time to find

agreement, because the NIB representatives were hesitant to agree to shutting down the Indian Claims Commission of Canada, until both the new commission was set up and the Inquiries Act issue was resolved. The final Cabinet approval for these two Orders-in-Council did not come until March, 1977. The reasons for the delay are several. Firstly, it took some time to find a mutually acceptable candidate for the Ontario Regional Commissioner.⁸² Eventually there was agreement that Justice Patrick Hartt would be the Ontario Regional Commissioner, and he would join former ICC Executive Director Brian Pratt of the prairies as the initial two regional commissioners. Atlantic Canada would add their commissioner at a later date.

The second apparent reason for the delay in getting the final Cabinet approval is that the Indian side was not pushing the process along. George Manuel was replaced by Noel Starblanket of Saskatchewan as the NIB President. It appears Starblanket took a number of months to get oriented to his job and did not choose to move quickly on this matter. In Alberta, Harold Cardinal began to withdraw from NIB and IAA activities, firstly to set up the "Indian Oil Sands Development Corporation" and latterly, to take a job as the new regional director of DIAND.

Finally, there was a new Minister of Indian Affairs and Northern Development, Warren Allmand, by the fall of 1976, and he also took some months to get oriented to his

new department and the evolving relationship with the Indian leaders. It appears that Mr. Allmand's advisors in the Department of Indian Affairs did not push for another Joint Sub-Committee meeting, because there was, in their view, nothing of substance to discuss.⁸³

Given these factors, it is perhaps not so surprising that Cabinet did not give their final approval to these last details of the Indian Rights Process structures until March 1977.

In concluding this section, the main points in order of priority are:

(a) The Cabinet did approve the Joint Committee recommendations on the negotiated agreements on a refined Indian Rights Process and this constitutes an explicit sharing of their policy-making power with Indian leaders and also the third facilitating party, the Indian Claims Commission.

The positive experiences of the joint work group on Indian Rights Processes and the Joint Sub-Committee and Joint Committee augurs well for the future of the process, given a continuing commitment on both sides to resolve claims as well as set up structures.

The Joint Work Group and especially the Joint Sub-Committee of the Indian Rights Process proved to be "where the action is" despite the official stress placed on the negotiations at Joint Committee level. In other words, this small group of people were the effective decision-makers on

crucial matters. Of course, they were also subject to being over-ruled by the NIB Executive Council or the full Cabinet. Another related factor is that the NIB representatives tended to have more influence on government policy-makers in this 1975-76 joint work group and joint sub-committee than did the Indian Claims Commission. However, this new "Indian Rights Process" will effectively involve a sharing of power by the federal government with the National Indian Brotherhood and the Canadian Indian Rights Commission. The Canadian Indian Rights Commission through its facilitating role will also have an impact on policy by way of compromise suggestions to bring both sides together.

This significant breakthrough of Canadian Indian leaders into the policy-making process of the federal Cabinet constitutes a real sharing of power. However, for this power sharing arrangement to become entrenched it requires continued usage and development over many years. This then is the real question that remains--will the prime movers (Government and Indians) continue to put enough effort and commitment into this new "Indian Rights Process" to firmly establish it as the joint policy-making body that it was intended to be? If this "Indian Rights Process" falters or falls into disuse for whatever reason, then Cabinet can still pull back the sovereignty or power that it has extended to Indian leaders. What Cabinet has given, it can still take away. In chapter six, we will further examine this question

in relation to the experiences of the Indian Rights Process in 1977.

(b) The "ball continues to remain in the Indian's court" as a partial consequence of the White Paper-Red Paper stand-off, and partly due to the fact that Indian representatives must still bring forward their claims to certain rights and privileges before government will respond, and partly due to the urgency of making the "Indian Rights Process" work. As we have noted earlier, the development of policy proposals on issues as deeply felt by Indians as their treaty and aboriginal rights is not an easy matter for the NIB.

Concluding Comment

In the last chapter of the thesis, I will pick up where this discussion has left off and consider the future for resolving these difficult Indian claims issues. In this chapter I have been primarily concerned to describe and evaluate the slow evolution towards a joint Cabinet/NIB forum for dialogue and negotiations.

On the Indian side, this slow evolution towards a joint policy-making structure can be described as a "positional policy" to use a phrase of Peter Aucoin. Aucoin develops further the concept of Theodore Lowi that the distinctive aspect of policy-making as opposed to decision-making is that policy involves coercion by government. Aucoin describes positional policy as:

Positional, as opposed to allocative, policies refer to those outputs which affect the structuring of influence in the conversion system. A good deal of policy activity by individuals and groups is related not so much to securing (at least in the short run) an allocation of desired values but rather the attainment of desired positions vis-a-vis other individuals or groups. What is sought is a share of the coercive abilities of government.⁸⁴

For Aucoin, allocative policies involve the "allocation of values" or the "value priorities" of government.⁸⁵ In this study, I have noted how the National Indian Brotherhood was concerned both to gain a better position within the structure of government policy-making and to diminish the policy influence of civil servants. Indeed, the thrust for a structure embodying a new partnership relationship with the federal Cabinet is characteristic of the NIB position in the entire 1974-77 period.

The Indian Claims Commission of Canada, through its policy influence and work to get the Indian Rights Process established, effectively fulfilled several of its original terms of reference, and therefore, can be said to have completed its mandate.

On the government side, it seems clear that they had their own motives, which related, among other things, to a recognition of the need for more effective policy development and implementation, particularly in the difficult area of unresolved Indian claims.⁸⁶ As we have seen, a host of factors contributed to the eventual agreement by government to this unique Indian Rights Process.

This slow evolution to an Indian Rights Process sets the stage for the sixth and final chapter on the future of Alberta Indian land claims. In the next two chapters, I will consider the involvement of the provincial government vis-a-vis Alberta Indian land claims and the land claim versus development dilemma re. the Athabasca tar sands. In these next three chapters, I will be considering the negotiating experiences of the Bighorn Stonies, the Isolated Communities and the Ft. Chipewyan Cree Band. Thus, I will be able to more fully examine the progress towards land claims settlements as well as policy-making structures, and the inter-relationships of both of these important dimensions. To put these dimensions in the terminology of policy analysis, I will now consider Indian land claims in terms of positional and allocative policies to use Aucoin's terminology.

FOOTNOTES--CHAPTER 3

¹Dr. L. Barber, On the record interview, Feb. 17, 1977, Calgary, Alberta

²Geoffrey K. Roberts, A Dictionary of Political Analysis (London, Longman Group Ltd., 1971) pp. 202-3.

³Harold Laski, A Grammar of Politics (London, George Allen and Unwin Ltd., 1967), Fifth Edition, p. 44.

⁴Ibid., pp. 74-75.

⁵Ibid., p. 80.

⁶The Edmonton Journal, Aug. 9, 1974, p. 19.

⁷Ibid.

⁸The Globe and Mail, Oct. 1, 1974, p. 1.

⁹The Globe and Mail, Oct. 2, 1974, p. 8.

¹⁰Ibid.

¹¹The Globe and Mail, Oct. 4, 1974, p. 8.

¹²Buchanan, Hansard, Oct. 3, 1974, p. 65; and Trudeau, Hansard, Oct. 4, 1974, p. 119.

¹³Interview, June 13, 1977 (Confidential source).

¹⁴Interview with Clive Linklater, June 5, 1975.

¹⁵"Founding meeting for the Consultation Mechanism of the National Indian Brotherhood Executive Council and Ministerial Consultation Committee." Ottawa, July 7, 1972, mimeo (NIB Verbatim minutes). This meeting was a follow-up to a NIB Annual Assembly in March 1972, when the NIB Executive Council was given a mandate to be the Negotiating Committee to negotiate with Cabinet on national policy and program matters.

¹⁶Minutes of October 9, 1974 meeting, p. 7, mimeo (Verbatim minutes recorded by Darlene Saywell, IAA secretary).

¹⁷Ibid., pp. 13-14.

- 18 The Globe and Mail, Oct. 10, 1974, p. 9.
- 19 Interview, June 13, 1977 (Confidential source).
- 20 The Globe and Mail, Oct. 10, 1974, p. 9.
- 21 Ibid.
- 22 Buchanan, Hansard, October 24, 1974, p. 746.
- 23 Minutes of November 20, 1974 meeting, pp. 6-7
(Verbatim minutes, IAA).
- 24 Letter from H. B. Robinson to Indian Band Council
and Indian and Inuit Associations, July 29, 1974.
- 25 Ibid., p. 2.
- 26 IAA--Indian Association of Alberta
FSI--Federation of Saskatchewan Indians
MIB--Manitoba Indian Brotherhood
- 27 Letters of Cardinal to Buchanan, September 19, 1974
and Ahanakew to Buchanan October 7, 1974.
- 28 Letters of Cardinal to Trudeau, October 2, 1974.
- 29 Letter of Trudeau to Cardinal, November 12, 1974
and letter of Robinson to Cardinal, December 13, 1974.
- 30 P.C. 1969-2405, December 19, 1969 (see report of
the Standing Committee on Indian Affairs and Northern
Development, March 22, 1973, p. 7:42).
- 31 "Indian Claims Processes" IAA, MIB, FSI, January
1975, Introduction, mimeo.
- 32 Ibid., Introduction (underlining in the original).
- 33 "Indian Claims Processes," Lloyd Barber,
Commissioner on Indian Claims, December 6, 1974, mimeo (see
especially "An Emerging Proposal," pp. 12-18); and Interview,
June 13, 1977 (Confidential source).
- 34 "Indian Claims Processes," IAA, MIB, FSI, January
1975, mimeo, p. 7 (underlining in the original).
- 35 Revised "Indian Claims Processes," IAA, MIB, FSI,
January 1975, mimeo, pp. 2, 3 and 7.
- 36 Summarized minutes of the Executive Council Meeting
held on January 28-30, 1975 in Ottawa, Ontario.

³⁷Ibid., p. 4.

³⁸Ibid., pp. 31, 33.

³⁹Ibid., pp. 13, 27.

⁴⁰Ibid., p. 16.

⁴¹Interview, June 8-13, 1977, Ottawa (Confidential source).

⁴²"Summarized Minutes of the Special Executive Council," held on February 18, 18, 1975 in Ottawa, p. 2.

⁴³Ibid., Resolutions, pp. 1-2.

⁴⁴"Indian Rights Processes," NIB, February 1975, mimeo, p. 5.

⁴⁵Ibid.

⁴⁶Dr. L. Barber, on the record interview, Feb. 17, 1977, Calgary, Alberta.

⁴⁷Ibid.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰Interview, June 8, 1977, Ottawa (Confidential source).

⁵¹Ibid.

⁵²"Claims Process," DIAND, 1975, mimeo.

⁵³Ibid., p. 1.

⁵⁴Ibid., pp. 4-6.

⁵⁵Ibid., pp. 6-7.

⁵⁶Ibid., p. 6.

⁵⁷Interview, June 13, 1977, Ottawa (Confidential source).

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹Barber, Interview, op. cit.

⁶²Interview, June 13, 1977, Ottawa (Confidential source).

⁶³Barber, Interview, op. cit.

⁶⁴Ibid.

⁶⁵Ibid.

⁶⁶Interview, June 8, 1977, Ottawa (Confidential source).

⁶⁷Barber, Interview, op. cit.

⁶⁸"Minutes of a meeting with the NIB/Cabinet Committee," April 14, 1975, pp. 1-2 (Verbatim Minutes recorded by Darlene Saywell, IAA secretary).

⁶⁹Ibid., p. 4.

⁷⁰Ibid., p. 10.

⁷¹Ibid., p. 7.

⁷²Ibid., p. 13.

⁷³Minutes of the Joint Working Group, May 21, June 16, July 16, October 8, Privy Council Office, mimeo.

⁷⁴Discussion paper submitted by the Department of Justice, July 16, 1975, mimeo.

⁷⁵"NIB Position Regarding Access to Cabinet," Appendix A, Report of the Joint Working Group on Indian Rights Processes, October 14, 1975.

⁷⁶"Draft of the Working Group," July 25, 1975, mimeo, p. 8.

⁷⁷"Joint Cabinet/National Indian Brotherhood Committee Meeting," December 12, 1975, Ottawa (Minutes taken by the NIB secretary), p. 1.

⁷⁸Statement of the Prime Minister at a meeting with the Indian Association of Alberta and the National Indian Brotherhood, Ottawa, June 4, 1970, mimeo, p. 3.

⁷⁹Brian Pratt, Interview, Calgary, May 16, 1977 and Interviews, June 8, 10, 13, 1977, Ottawa (Confidential source).

⁸⁰Meetings of the Joint Working Group, March 25, 1976 and May 5, 1976.

⁸¹Letter of K. Norman to N. Brooks, January 20, 1976.

⁸²Brian Pratt, the Prairie Regional Commissioner had already been agreed upon by July 1977 (reference--letter of Lalonde to Manuel, July 8, 1976).

⁸³Interviews, June 8 and 13, 1977, Ottawa (Confidential sources).

⁸⁴G. Bruce Doen and Peter Aucoin, editors, The Structures of Policy-Making in Canada (Toronto, the Macmillan Company, 1971), p. 25.

⁸⁵Ibid., pp. 11 and 13.

⁸⁶Brian Pratt, Interview, May 17, 1977, Calgary; and Interview, June 13, 1977, Ottawa (Confidential source).

CHAPTER 4

FEDERAL-PROVINCIAL RELATIONS AND INDIAN LAND CLAIMS: THE ALBERTA SITUATION

Introduction

As I have noted in Chapter one, Indian land claims have, in the 1970s, become a crucial issue on the agendas of the federal and provincial governments. The contemporary significance of Indian land claims has not left Alberta unaffected. Alberta Indian land claims have threatened or appeared to threaten the province-building designs of Premier Peter Lougheed, particularly in the area, of the Athabasca tar sands. Hence, the IAA and several Indian bands came into conflict with a powerful provincial government.

Like most other areas of federal-provincial relations Indian land claims have their own particular history. Therefore, I will initially explore the legal-constitutional background of the Indian land claims, especially as it comes to bear on the 1930 Canada-Alberta Natural Resource Transfer Agreements. Later I will deal with the fledgling federal-provincial machinery and dialogue on Indian matters in the 1960s. These sections will form the underpinning for an examination of the Canada-Alberta-Indian Association of Alberta post 1971 relations as they relate to Indian

land claims. In the process I will examine the progress of the Bighorn Stoney land claim. In subsequent chapters, the claims of the Isolated Communities and the Ft. Chipewyan Cree Band of northern Alberta will receive intensive study.

The main concern of this chapter will be to develop factors of analysis in order to understand the complexity of federal-provincial-Indian relations and their consequent impact on the land claims. Moreover, the evolving tripartite committee structure will receive critical scrutiny.

A. Some Legal and Constitutional Issues
Relating to "Lands Reserved for
Indians" and Indian Land Claims

In 1867 the federal government was given exclusive jurisdiction over "Indians and lands reserved for Indians" under section 91(24) of the British North America Act. At the same time, section 109 of the BNA Act gave to certain provincial governments:

All Lands, Mines, Minerals and Royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals or Royalties shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any Interest other than that of the Province in the same.¹

On the surface of things there would appear to be no conflict involved in that, for example, the province of Ontario, pursuant to section 109, had control of Crown lands (see section 108 and 117 of the BNA Act for exceptions re. federal Crown land), and the existing Indian reserves would come under federal jurisdiction, i.e., come under the

category of federal Crown lands held in trust for the Indians. It should also be noted that under Section 125 of the BNA Act both provincial and federal Crown land are not liable to taxation; hence these categories of land have a "special status" in Confederation.

The first federal-provincial problem developed as treaties began to be negotiated in the west. In 1873, the federal government negotiated and signed the "Northwest Angle Treaty No. 3" with the Indians of northwestern Ontario in the Lake of the Woods area. The federal government apparently assumed that these "Indian lands" belonged to the federal Crown now that the Indian title had been extinguished. Ken Lysyk, a noted authority on constitutional law and Indian title, describes the federal position as follows:

. . . in the first decades after confederation, the federal government, proceeding under the misapprehension that Section 91(24) of the British North America Act conferred proprietary rights as well as legislative authority to regulate lands reserved for Indians . . .²

Proprietary rights involve exclusive ownership rights, while legislative authority primarily involves jurisdiction to pass laws, and may not involve any rights of land ownership.

Subsequently, the federal government in 1883 issued a permit to St. Catharines Milling and Lumber Company ". . . to cut and carry away one million feet of lumber . . ." from an area within the boundaries of Treaty No 3.³ The Attorney General of Ontario filed a writ in court against the company asserting among other things that they had no rights to the

lumber. The case was finally appealed to the Judicial Committee of the Privy Council, and Lord Watson delivered the judgement, which on the crucial federal-provincial question was:

Their lordships are, however, unable to assent to the argument for the Dominion founded on Section 91(24). There can be no a priori probability that the British Legislature, in a branch of the Statute of legislative power, intended to deprive the Provinces of rights which are expressly given them in that branch of it which relates to the distribution of revenues and assets. The fact that the power of legislating for Indians, and for lands which are reserved for their use, has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the Province to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title.⁴

This effectively meant that as soon as Indian treaty No 3 had been signed, the clear and complete title to the land in question passed to the province of Ontario.

Other aspects of Lord Watson's judgement are crucial to an understanding of Indian title, as he interpreted the meaning of Indian rights based on the Royal Proclamation of 1763:

. . . the tenure of Indians was a personal usufructory right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be "parts of Our dominions and territories;" and it is declared to be the will and pleasure of the Sovereign that, "for the present", they shall be reserved for the use of Indians, as their hunting grounds, under his protection and dominion. There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express an opinion upon the point. It appears to them to be sufficient for the purposes of this case that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a plenum dominium whenever that title was surrendered or otherwise extinguished.⁵

This judgement effectively limited the scope of Indian or aboriginal title but did recognize its existence.

This "St. Catherines" judgement left the federal government in an embarrassing position, not only because of its obviously mistaken attempts to assert proprietary rights to the lands where Indian title had been extinguished. The federal government was apparently faced with unfinished treaty business, namely, further "Indian reserves" in Treaty No. 3 to be set aside for the use and benefit of Indians. However, the provincial government owned and controlled this land.

A way out of the impasse for the federal government was a federal-provincial agreement with the province of Ontario in 1894, which involved identical statutes of Ontario and Canada titled "An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian lands."⁶ Upon examination of the agreement, it is clear that Ontario was able to negotiate certain rights in these questions on the strength of the "Judicial Committee" decision in the "St. Catherines Milling and Lumber Co." case, namely:

- . . . the concurrence of the province of Ontario is required in the selection of the said reserves.
- . . . to avoid dissatisfaction or discontent among the Indians, full enquiry will be made by the government of Ontario, as to the Reserves . . . with a view of acquiescing in the location and extent thereof unless some good reason presents itself for a different course.
- That in the case that the Government of Ontario after such enquiry is dissatisfied with the reserves or any

of them already selected . . . , a joint commission or joint commissions, shall be appointed by the Governments of Canada and Ontario to settle and determine any questions or all questions relating to such reserves or proposed Reserves.

- . . . any future treaties with Indians in respect of territory in Ontario . . . , shall be deemed to require the concurrence of the Government of Ontario.⁷

In 1924, a further Canada-Ontario agreement was signed, which dealt primarily with Ontario's rights vis-a-vis Indian reserve water and mineral resources.⁸ In the latter case, Ontario retained the right to fifty percent of any royalties or payments from mineral resource development on Indian reserves.⁹ These Canada-Ontario agreements of 1894 and 1924 influenced the natural resource transfer negotiations between the three prairie provinces and the federal government.¹⁰

To be specific, when the federal government finally transferred lands and natural resources to the prairie provinces in 1930 to make them legally equal partners in Confederation, it contained the following clause relating to Indian reserve lands:

All lands included in Indian reserves within the Province including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon request of the Superintendent General of Indian affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the province under the provisions hereto (emphasis mine).¹¹

The intention of this foregoing "legal history" in regard to "lands reserved for Indians" has been to point out several important trends and conclusions. Firstly, in a vital area of Indian land claims--treaty land entitlement for reserves--Canadian federalism has evolved from an apparent assumption of federal dominance at Confederation to a clear statement, whereby both the federal and provincial governments hold powers, and both must be in agreement before future reserve land can be set aside. This situation developed through judicial interpretation and reveals another aspect of shared sovereignty in Canadian federalism. The negotiated federal-provincial agreements that followed the court decision allowed for a successful accommodation of new circumstances.

Secondly, the aforementioned clause relating to Indian reserve lands specifies that agreement must come from the "Superintendent General of Indian Affairs" (today, the Minister of Indian Affairs and Northern Development) and the "appropriate Minister of the Province" (today, the Associate Minister of Energy and Natural Resources for Alberta). In effect, this statute spells out ministerial involvement in the federal-provincial machinery for Indian reserve settlements.

Thirdly, the Indian bands that might be involved are not included in the 1930 agreements, and they are therefore legally dependent on both governments to fulfill the treaty obligations vis-a-vis Indian reserves. However, many reserve

land requests subsequent to 1930 have, on balance, been effectively implemented (for example, Sunchild-O'Chiese reserve and the Ft. Chipewyan reserve). In the case of the Sunchild-O'Chiese reserve, located north of Rocky Mountain House, the Cree and Chippewa representatives, along with federal and provincial officials, worked together on a committee to select a reserve site in the mid 1940s.¹²

B. Federal-Provincial Relations and Indian Social Welfare Programs

In this section I would like to briefly examine some aspects of the changing relationship between the federal and provincial governments and particularly the evolution of federal-provincial structures from the earlier coordinating committees to the tripartite committees for Indian matters.

In 1948 the Joint Senate and House of Commons Committee on Indian Act Revisions recommended among other things "cooperation with the provinces in extending services to the Indian."¹³ This recommendation was to form a key aspect of the post-war Indian policy. A preparatory document for the first Federal-Provincial Conference on Indian Affairs held in 1964 stated this objective as: "to promote the extension of provincial services and programs in order that needs in Indian communities may be met on the same basis as for other communities."¹⁴

This policy was later incorporated into federal legislation allowing extension of provincial social welfare

to treaty Indians on reserves in the 1966 Canada Assistance Plan and also formed part of the 1969 White Paper on Indian Policy. Only Ontario picked up the option of extending social services, but this concept of policy remains current in Alberta as witnessed by the recent proposal for extending of social services from the province of Alberta to treaty Indians.¹⁵

This policy thrust of extending provincial services to on-reserve treaty Indians serves to underline the unique aspects of the Indian situation. As we have noted, they have in effect lived in a "unitary state" until comparatively recently. Under the BNA Act of 1867 "Indians" were a federal responsibility, and the subsequent Indian Act and Indian administration developed in such a way that all Indian services, whether education, housing, welfare or economic development, came through the federal government. Indians and the federal government have, therefore, developed a continuous intense relationship over Canada's first century. In contrast, Indians have had comparatively little contact with the provincial government. This lack of contact has led to misunderstanding and suspicion on both sides.

With post-war equalitarian sentiments and concerns for a non-discriminatory society, the thrust for equal services for Indians was not a surprising governmental response. Indeed, this policy thrust might well be related to a general post-war concern of the federal government for ". . . a comprehensive system of social security."¹⁶ It was felt that

because provincial governments provided, for example, education for almost all provincial residents, the provincial department would have the advantage of scale and specialization that Indian Affairs Educational Service could not hope to match. Consequently, from 1950 onwards, the federal government contracted through tuition agreements with school boards and provincial governments for Indian children on reserves to attend provincial schools. By the mid 1960s fifty percent of the Indian children were attending provincial schools.

The main topic of the first and only Federal Provincial Conference on Indian Affairs were, however, social services and community development, not education. This conference was set in motion by the November 1963 meeting of first Ministers which had:

. . . placed stress on the necessity of correlating Federal and Provincial policies and responsibilities for health, welfare, education, community development and other services if Indians were to be more closely associated with other Canadians.¹⁷

Most of the Ministers and their deputies were from provincial departments of welfare or health and welfare. They heard federal proposals for financing provincial extensions of welfare and community development programs to reserves. Most were sympathetic in principle to the federal proposal, although Ontario was the only province to soon after sign the necessary agreements. The conference agreed to set up federal-provincial Coordinating Committees composed of three

federal Indian Affairs Branch officials and three provincial officials in each province.¹⁸ These officials would handle the necessary follow-up of the meeting and the questions of proposed implementation.

Indian consultation was a federal prerequisite for the provincial extension of services, and to this end the Department of Indian Affairs devised Indian Regional Advisory Councils to facilitate Indian consultation. As we have noted in chapter two, this Advisory Council came under fire from Harold Cardinal in 1968. In Alberta, the Indians rejected the provincial proposal on the grounds that it would interfere with their treaty rights and their special relationship with the federal government.

After interviewing federal and provincial officials regarding the coordinating committee activities, Alan Cairns wrote in the Hawthorne Report of 1966:

The most general conclusion about coordinating committees is that their establishment and successful operation are fraught with exceptional difficulty. This particularly reflects the different importance attached to the committees by the two governments. In general the committees are much more highly valued by the Branch than by provinces. In some cases it was difficult for the Branch to get committees established at all. Once established it is by no means certain that the committees will in fact contribute to the development of fruitful intergovernmental relations. At the lowest level a committee may do no more than provide a formal, regular framework within which federal and provincial officials can meet. If the committees are to become significant instrumentalities for the forging of federal-provincial cooperation they have to be of more than marginal importance to their members. If they are to be of major importance they have to meet frequently and to achieve continuing success to prevent the dissipation of enthusiasm among their participants.¹⁹

It was clear that DIA officials wished to have provincial resources utilized, in order to better come to grips with the many social problems, especially of urban Indians.

In terms of improving the existing relations and the work of the Coordinating Committees, Cairns stressed that provincial decision makers must ". . . perceive a net gain in extending such services to Indian communities."²⁰ He describes the gains in the following categories: financial; political, and individual psychic (politicians have to live with their consciences).²¹ For example, one of the reasons Ontario agreed to the extension of welfare and community development programs was the political pressure that was put on the provincial government due to greater press exposure and general political interest in the Indian situation than existed in other provinces. Thus there was a political gain for Ontario by taking this step.

Cairns also describes the fundamental changes in attitudes and perceptions that are required on all three sides, if progress is to be made. For the Department of Indian Affairs, their "inward looking" and "isolationist" thrust of the past must be replaced by an emphasis on the external relations with the provinces.²² For the provinces, it is necessary to begin seeing the Department of Indian Affairs in a more balanced perspective, rather than perpetuating the negative image of the "other government." For example, it should be remembered that the inadequate

historical record of the DIA finds parallels in the treatment of the prairie provinces of the Metis population.²³ Probably the most fundamental changes are being demanded of the Indian population, for if the trend to devolution to the provinces continues, the Indian is faced with identity questions of a basic nature.

A consequence of federalism is the existence of a dual citizen allegiance to both central and provincial governments. For historical reasons, Indians have been almost exclusively oriented to Ottawa. . . . The long run goal of present policy is to engender in Indians that duality of subjective civic identity which is a consequence of federalism and which non Indians possess in varying degrees. The completion of this process will take time. For Indians it will only come about when experience shows them convincingly that provincial governments, no less than the federal government, can be trusted to act wisely and considerately in dealings with them.²⁴

In my view, this call for a change in attitudes all the way around is a key ingredient to effect mutually beneficial federal-provincial-Indian relations and is equally applicable today. Much has changed since the 1960s, but many aspects of the relationships remain the same. By the late 1960s, there was fortunately a new tripartite--"Canada-Alberta-Indian Association of Alberta" committee established through the impetus of the then provincial Minister of Municipal Affairs, Fred Colburne, and Harold Cardinal of the Indian Association of Alberta.²⁵ Colburne took an active sympathetic interest in Indian questions and later assisted the Indian Association of Alberta to acquire funding for the organization.²⁶ Thus, a tripartite mechanism was in

place by the time the Progressive Conservative Party under Peter Lougheed swept to power in 1971.

C. Canada-Alberta-Indian Association
of Alberta Relations

The Canada-Alberta-Indian Association of Alberta relations regarding land claims must be placed in the context of the political-economic climate of the 1970s if we are to understand developments in this area. Several inter-related factors must be considered, some of which are peculiar to Alberta, and some of which are applicable nationally.

In chapter one, we began the examination of the impact of the energy crisis on federal-provincial relations and its relation to the Indian land claims. The overall impact of the energy crisis on Canadian federalism has been effectively reviewed elsewhere.²⁷ However, I would like to briefly examine the evolving positions of Canada and Alberta on the energy crisis, and then assess the impact of Canada-Alberta relations generally on Indian land claims.

The energy crisis in Canada was precipitated primarily by the Organization of Petroleum Exporting Countries (OPEC) oil price increase, and this was to have an impact on federal-provincial relations for a considerable period of time. This energy crisis placed a terrific strain on the relations between the governments of Canada and of Alberta. Subsequent events have shown that neither Prime Minister Trudeau nor Premier Lougheed is inclined to run away from a

fight, especially when they perceive that fundamental interests of their respective governments are at stake. Initially Trudeau's response was to attempt to protect and modify the impact of world oil prices on Canadian consumers east of the Ottawa Valley and to modify the impact of domestic oil price increases demanded by the producing provinces. Gradually the Canadian government's policy shifted to balance these concerns with a recognition that Canadian oil products must eventually be sold at world prices and to place emphasis on Canadian self reliance through the development of our own oil and gas resources.²⁸ Alberta's position might be principally characterized as a desire to get a high return on a dwindling Alberta owned natural resource in order to use the subsequent income to diversify Alberta's economy and thus protect present and future generations in this province. Once the federal government's position shifted, the goals of Canada and Alberta came more into line, and the head-on conflict subsided somewhat.

Peter Meekison, a deputy minister in the Alberta government, suggests that intergovernmental relations between Alberta and Canada were particularly bad between September of 1973 (when the federal government announced the price restraint program for oil and natural gas) and June of 1975 (when there was finally a recognition in the federal budget of the need to move towards world oil prices).²⁹ Meekison also commented that by February of 1975 when the federal

government agreed to contribute \$300 million to the equity financing of Syncrude, relations improved considerably between the two governments.³⁰

My point in developing this analysis of intergovernmental relations generally is to emphasize that when things were going "sour" between Ottawa and Edmonton over energy, this had a spin off effect in other policy areas as well. In the area of Indian land claims things were also quite "sour" in this period. At one point, Premier Lougheed in a meeting with Harold Cardinal made a remark to the effect that "we expect to be entering into a big battle over energy with Ottawa, and you should be careful not to get in between us."³¹ While this statement could be variously interpreted, it is clear that Lougheed saw the energy battle with Ottawa as a prime focus of his attention, and he felt the Indians should consider carefully any action contemplated. Intergovernmental relations generally had therefore, an impact on land claims--a special policy area outside the main arena of tension yet affected by it.

Secondly, Indian land claims are regarded as a lesser priority by the Alberta government in light of the fact that Indian land claims do not have such a fundamental impact on the provincial economy in the way that energy does. The federal government gives more priority to land claims but these are counter-balanced by the very strong Canadian energy needs. The relative priority of Indian land claims often

varies from time to time depending on the political pressure exerted by Indians or a supportive non-Indian public.

Examples of external political pressure are the Indian caveat on northern Alberta including the tar sands, which I shall examine later, and the Southern Support Group for Native Land Claims that has made representations to the Berger hearing on the MacKenzie Valley pipeline.

Thirdly, as we have noted in Chapter Two, Indian organizations have only relatively recently received funding to research their land claims. The federal government initially funded Indian organizations to do this research in the period 1972-1976, and this funding has subsequently been extended. This created a new situation, for it gradually placed Indian bands and organizations in the position where they could present documented land claims to the federal and provincial governments. It should be noted that most Indian requests for reserves on the prairies had been settled in earlier times, but some Indian grievances and land claims have remained outstanding. It is these land claims that are currently at issue.

Fourthly, as we have noted, the leadership and awareness of Indian organizations have developed rapidly in the last decade. Here I am thinking particularly of the ability of Indian leaders to present their case articulately and to negotiate with their "eyes wide open"; that is, they are aware of the various tactics of governments.³² Harold

Cardinal, the president of the Indian Association of Alberta since 1968, has been an aggressive spokesman for Indian rights and land claims. This being said about Indian organizations, the question remains--have Alberta Indian leaders have been able to function effectively to produce a successful outcome of land claims negotiations? Alberta Indian leaders in recent years have faced a dilemma. On the one hand, the "weight of history has seemed to rest on their shoulders," in that they are very concerned to get a good deal for their people today in order to make up for past misdealings of government. To be regarded as a "sell-out" Indian leader is not an esteemed value. On the other hand, negotiations with government necessarily involve compromises and a political style of tact or diplomacy. Indian leaders are not always willing to accept the latter to get a settlement. Thus, Indian leaders, such as Harold Cardinal or John Snow, are still placed in an extremely difficult position vis-a-vis these Indian land claims negotiations. These circumstances often mean a slowing down or halt to the successful resolution of claims. Of course, a hard-line attitude of the provincial government also tends to harden the negotiating stance of Indians, but the dilemma remains for Indian leaders.

These four factors must be coupled with two other factors that were partially developed in the preceeding two sections. Firstly, land transactions are by their very

nature legal transactions, and in this instance they involve constitutional questions as well. (The 1930 Natural Resources Transfer Act was incorporated in the British North America Act.) This means that negotiations on Indian land claims will involve lawyers on all three sides, namely; the Department of Justice for the federal government, the Attorney General's Department for the province, and the legal counsel for the Indians. This has the effect of making the land claim negotiations more complicated, and there is a tendency for the lawyers on all three sides to narrowly define the interests of their respective clients. This leads to an adversary situation where one's own position is emphasized, and the position of others is played down. Negotiations in this context are not impossible, but they are more difficult.

In this connection, we have noted that "lawful obligation" forms a definite part of the policy of the government of Canada vis-a-vis treaty rights.³³ Similarly, the government of Alberta's position is largely determined by their "legal obligations" to the Indians.³⁴ Further, there appears often to be a tendency on the part of the respective legal counsels, if convinced of the legal strength of their position, to recommend to their political superiors that particular land claim issues be taken to the courts to resolve. This approach is often politically appealing as well. For governments it allows them to avoid making what may be a politically unpopular decision. For the Indians a court

battle or a potential court case may strengthen their bargaining position. In sum, there are powerful forces tending to make land claims issues legal matters, not matters for negotiation. We will examine this phenomenon in greater depth in relation to the Alberta Indian land claims particularly in chapter six.

Secondly, we have noted that Indians have been accustomed to dealing exclusively with the federal government. This has had a definite impact on the current land claims negotiations. For example, negotiations have often been carried out between the Indian bands and the federal Crown. Agreements have, in some instances, been worked out regarding the validity of the claim and the correct population totals of the band, and therefore the amount of acreage owing. The province is then effectively presented with a fait accompli, and their stamp of approval is requested. In light of the fact that the province, as owners of the land, have not been consulted and perhaps only read about the claims in the newspapers, the tendency of the provincial officials is to recommend that the negotiations start again at "square one," with no assumptions of validity, population totals or land involved.³⁵

We have already noted the potential of the "Indian Rights Process" to resolve Indian land claims. Eventhough there appears to be much promise for this new mechanism to resolve claims between the Indians and the federal government,

it does not involve the provinces. The provinces have at least been informed of its existence,³⁶ but the fact remains that the tradition of federal-Indian interaction will inevitably have the tendency of slowing down the final resolution of claims, because the third party has not been included.

To summarize our main factors of analysis, I would list them as follows:

1. The general state of intergovernmental relations will tend to dictate the degree of progress made in any specific area of policy;
2. Indian land claims are low on the priority list of provincial government and the federal position is ambivalent, i.e., the land claims are counter-balanced with energy needs.
3. Indian land claims documented by Indians are a modern phenomena related to research funding;
4. Indian organizations are in an extremely difficult negotiating position vis-a-vis Indian land claims agreements with governments;
5. Lawful or legal obligation will play a definite part in any land claims negotiations; and
6. The tradition of Indian-federal relationships hampers somewhat the tripartite nature of successful resolution of Indian land claims.

I would now like to examine the specific federal-provincial-Indian machinery for dealing with Indian issues in Alberta and the progress of negotiations on the land claims of the Bighorn Stoneys.

D. The Experience of the Tripartite
Committee with the Bighorn
Stoney Claim

As noted in section B, the "Tripartite Committee" is the mechanism that has been developed in Alberta for the resolving of Indian issues that involve the provincial as well as the other two parties. Gradually it was recognized that Indian representatives must be involved in any decisions affecting them. The Tripartite Committee was operative by the late 1960s and was later adopted by the Lougheed government. In the Second Annual Report of Alberta's Federal and Intergovernmental Affairs Department of Alberta, the Tripartite Committee is described as follows:

The meetings in the area of native affairs are mostly meetings of the Alberta Tri-partite Committee which has representation on it from the provincial and federal governments and the Indian Association of Alberta. The Committee, which has held its first meeting in June 1973, is a mechanism through which these parties can discuss provincial and federal policies and programs affecting Indian people and make recommendations for decisions. There are two levels of the committee: a policy level consisting of provincial and federal ministers and the President of the Indian Association of Alberta and an operational sub-committee level consisting of provincial and federal officials and a staff member from the Indian Association.³⁷

One of the specific claims which the Alberta Tripartite Committee dealt with is the claim of the Bighorn Stoney's to land on the Kootenay Plains west of Rocky Mountain House. As we noted in Chapter One, the Stoneys claimed that they had been left out of the treaty-making process and its implementation, and that they had never been given reserve lands. Although a "provisional reserve," based ostensibly on moral grounds, had been granted to them in the mid 1940s, this 5000 acre tract was partially flooded by the

Bighorn Dam on the North Saskatchewan River. The Stoney presented a well documented claim to the federal government. Eventually, after many negotiations, the federal government through a letter by Jean Chretien, Minister of the Department of Indian Affairs and Northern Development, to Chief John Snow agreed to a land entitlement of 18,000 acres.

Next the federal government and the Indians turned their attention to the province of Alberta. An Alberta Tripartite Committee meeting was arranged in Ottawa in the spring of 1974 between Jean Chretien, the federal minister, Don Getty, the provincial minister of Federal and Intergovernmental Affairs and at that time responsible for Indian land claims, and Harold Cardinal, the President of the IAA. There appeared to be a measure of goodwill on all sides to resolve the Stoney claim. However, Harold Cardinal and Chief John Snow apparently arranged for a number of Stoney Band members to attend the meeting. One report of the meeting was that with "half the Stoney tribe" in attendance the Alberta minister was put into a negotiating position of "undue pressure."³⁸ Other reports of the same meeting note that Chretien appeared to try to "steamroller" Getty into accepting the federal position.³⁹ In any event, Alberta took some time after the meeting to come to a position on the Stoney land claim.

On October 25, 1974 Premier Lougheed announced to the Alberta legislature the government position:

. . . as a trustee, the government being trustee for the people of Alberta and the public lands, we feel that we should not transfer lands of this nature involving legal title back to the federal government to meet its legal obligations unless we are absolutely satisfied of our legal position . . . previous documentation had questioned the legal validity of the Stoney claim . . . The Statutes of Alberta have a Constitutional Questions Act which provides for us to make a direct reference to the courts. We neither accept nor reject the claim of the Stoneys. If the courts direct that there is a legal obligation by the people of this province to make that transfer we will make it . . .⁴⁰

The premier noted several other legal issues arising from this request for land under clause ten of the Natural Resources Transfer Agreement, namely; the definition of unoccupied Crown land, and if the claim is valid, which particular land must be transferred? Lougheed also noted how the federal government had established a "Commissioner of Indian Land Claims, Mr. Barber," but that this was done "without any references to the provinces."⁴¹

Subsequent to this provincial action, Bob Young, the Bighorn Stoney lawyer, pointed out that there are some ambiguities in clause ten of the Natural Resources Transfer Agreement that the court will be asked to interpret.⁴² The following questions appear, to Young, to be relevant:

- What do we mean today by "unoccupied Crown lands"?
- What happens if there is no "agreement" between the respective federal and provincial ministers?
- Is the federal government required to pay for the reserve lands to be set aside?

To date, the Attorney General's Department for

Alberta and Bob Young have not been able to reach an agreement on the relevant questions to put before the courts under the "Constitutional Questions Act" of Alberta. Thus almost three years later, the Bighorn Stoney claim is still unresolved.

To my understanding, a number of factors already presented in this paper are helpful in interpreting this Alberta decision. These factors include:

1. the "sour" nature of intergovernmental relations in this particular period;
2. the "legal" nature of the issue involved and the consequent heavy input of the Attorney General's Department;⁴³
3. a land claim that contained a number of puzzling or ambivalent points (e.g., land was being requested by Chief John Snow, from Morley in Treaty Seven, for some of his band members who resided in the Bighorn, Treaty six area);
4. The persisting tradition of federal-Indian negotiations and agreements without reference to the provinces; and
5. an ineffective use of the tripartite committee by all sides.

It should also be noted that Lougheed's stress on the government's role as a trustee for all Alberta appears to be in conflict with the view of "special status" for any

particular group, in this case the Indians and their land.⁴⁴

The Alberta position on the Stoney land claim was a matter of keen disappointment for the Indians and the federal government. Attempts were made by the federal government to purchase the 18,000 acres from the province, but to no avail.⁴⁵

In light of the fact that the Fort Chipewyan Cree Band claim is directly affected by new developments in the summer of 1977 in the position of the Alberta government regarding treaty land entitlements, I will hold consideration of this claim over until the final chapter. It will provide a concrete focus for assessing the future of Alberta Indian land claims. In the next chapter, we will consider the land claim caveat of the Isolated Communities.

At this point, it would perhaps be useful to take a reading on the Indian and the Alberta side to gauge the respective evaluations of the Tripartite Committee and its usefulness for land claims negotiations. In an interview with Harold Cardinal, two main factors were mentioned:

1. A key difficulty with the work of the committee can be related to the turnover of Ministers. For example, the Indian representatives were getting used to working with Al Adair, Native Affairs Minister when he was transferred to a different department and Bob Bogle took his place.
2. There must be a commitment on all sides to make the

Tripartite Committee work, and to resolve the issues. Cardinal remains sceptical about the province of Alberta's intention.⁴⁶

On the Alberta side, an official with a relatively long involvement in these issues, expressed concern the the Indians were not using the Tripartite Committee effectively as a forum for basic discussions on the principles underlying Indian land claims.⁴⁷ Rather, it was thought that Alberta had not been involved in most of the land claims negotiations from the start and consequently did not feel bound to federal-Indian agreements.

Concluding Comments

If the Tripartite Committee is to work as an effective mechanism for resolving land claims, several changes will probably have to take place. Firstly, both the Indian representatives and the government of Alberta representatives will have to "go the entire extra mile" to try to keep open communication and to understand the position and concerns of the other party. Secondly, the federal government may have to play both an Indian advocacy role and a mediating role between the party that owns the land "in trust for all Albertans" and the party that wants some of that land on the basis of a treaty right. Perhaps the Canadian Indian Rights Commission can assist in the mediating-facilitating role of getting all the parties together. Finally, the Tripartite Committee should be used at the beginning of the land claims

negotiation process, not at the end. Otherwise Alberta will be suspicious of federal-Indian agreements just as the Indians are suspicious of federal-provincial agreements in other areas. Thus I believe there is a role for the Tripartite Committee to play despite all the difficulties noted earlier. In chapter six, I will review the most recent developments in this area, particularly Alberta's desire to discontinue the Tripartite Committee.

FOOTNOTES--CHAPTER 4

¹British North America Act, 1867, Section 109.

²Ken Lysyk, "The Legal Status of Canada's Indians," in H. B. Hawthorne, A Survey of the Contemporary Indians of Canada, Vol. I (Ottawa, Queen's Printer, 1967), p. 214.

³St. Catherines Milling and Lumber Company v. Queen, on the Information of the Attorney General for Ontario, Judicial Committee of Privy Council, (1889) 14 App. Cas. p. 52.

⁴Ibid., p. 59.

⁵Ibid., pp. 54-55.

⁶Dominion-Provincial Agreement, 1894, 54-55 Victoria, Chapter 5. Indian Treaties and Surrenders, Vol. 3, (Ottawa, King's Printer, 1912), p. 133.

⁷Ibid., pp. 134-45.

⁸"An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian reserve lands" (The Indian Lands Act, 1924), Chapter 15, Provincial of Ontario Statute, April 17, 1924.

⁹Ibid., clause 6.

¹⁰Lysyk, op. cit., p. 214, footnote 3.

¹¹M. Ollivier, British North America Act and Selected Statutes, 1867-1962 (Ottawa, Queen's Printer, 1962), p. 364.

¹²Dawn Balazs, "Sunchild Indian Reserve #202 and O'Chiese Indian Reserve #203: The History of Their Lands," unpublished IAA research report (Ottawa, August, 1976), p. 79.

¹³Proceedings of the Joint Senate-House of Commons Committee on Indian Act Revisions, 1948, see especially pp. 186-190.

¹⁴The Administration of Indian Affairs, prepared for the 1964 Federal-Provincial Conference on Indian Affairs by the Department of Citizenship and Immigration, Indian Affairs Branch, p. 6.

¹⁵ See "A Discussion Paper on the Improvement of the Social Services Delivery System to Treaty Indian People of Alberta" (November 1967), Governments of Canada and Alberta.

¹⁶ Donald V. Smiley, Constitutional Adaptation and Canadian Federalism Since 1945, Documents of the Royal Commission on Bilingualism and Biculturalism, #4, p. 17.

¹⁷ Hon. R. Tremblay, Minister of Citizenship and Immigration, Opening Remarks, in Report of Proceedings, Federal-Provincial Conference on Indian Affairs, October 29, 30, 1964, Appendix D.

¹⁸ Report of Proceedings Federal-Provincial Conference on Indian Affairs, October 29-30, 1964, p. 25.

¹⁹ Alan Cairns, Chapters XI-XVIII in Hawthorne, editor, A Survey of the Contemporary Indians of Canada-Economic, Political and Educational Needs, Part I, p. 350.

²⁰ Ibid., p. 357.

²¹ Political gain is not meant to imply that the provinces would gain jurisdiction over Indians. The federal government would retain legislative jurisdiction under section 91(24), but would simply contract with the provinces to provide certain services. For further information refer to Department of Justice opinion in Appendix J, Report of proceedings Federal Provincial Conference on Indian Affairs.

²² Cairns, op. cit., p. 209.

²³ Ibid., p. 347.

²⁴ Ibid., p. 349.

²⁵ Interview with Harold Cardinal, March 4, 1977.

²⁶ Indian Affairs RG 10 Black files, File 1/24-2-1, Vol. 9.

²⁷ Donald V. Smiley, Canada in Question: Federalism in the Seventies, Second Edition (Toronto, McGraw-Hill Ryerson, 1976), pp. 143-153.

²⁸ The Minister of Energy, Mines and Resources, An Energy Strategy for Canada: Policies for Self-Reliance (Ottawa, Supply and Services Canada, 1976), pp. 147-48.

²⁹ March 4, 1977, interview with J. Peter Meekison, Former Director of Research and Planning, Federal and Inter-governmental Affairs, Government of Alberta, and the new Deputy Minister of this department.

³⁰ Ibid.

³¹ Conversation was retold to author by Harold Cardinal.

³² See for example the writings of Harold Cardinal, The Unjust Society (Edmonton, Hurtig, 1969), and The Rebirth of Canada's Indians (Edmonton, Hurtig, 1977).

³³ See the 1969 Statement of the Government of Canada on Indian Policy, p. 11, and Statement Made by the Honorable Jean Chretien Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People, August 8, 1973, p. 1.

³⁴ See Statement of Premier to the Legislature re. Indian Land Claims, Alberta Hansard, October 25, 1974, p. 3204.

³⁵ Interviews with Alberta Government officials (November 3, 1976 and March 4, 1977) (Confidential sources).

³⁶ March 30, 1976 letter of Judd Buchanan to all the provincial premiers re. Indian Rights Process (see Appendix 6).

³⁷ Second Annual Report (1974-75), Alberta Federal and Intergovernmental Affairs (Edmonton, Queen's Printer, 1976), p. 10.

³⁸ Interview, November 3, 1976 (Confidential source).

³⁹ Conversation with Dr. L. Barber, Fall, 1975, Saskatoon.

⁴⁰ Loughheed, Alberta Hansard, October 25, 1974, p. 3204.

⁴¹ Ibid., p. 3205.

⁴² Telephone conversation with Bob Young, March 1, 1977.

⁴³ Conversation with Alberta Government official at the time of Alberta's decision on Stoney Claim (Confidential source).

⁴⁴ This position has parallels to the federal position taken in the 1969 Government of Canada Statement of Indian Policy, e.g., "The Government believes in equality. It believes that all men and women shall have equal rights," p. 6.

⁴⁵ Conversation with federal official, Spring, 1975 (Confidential source).

⁴⁶Interview, Harold Cardinal, March 4, 1977, Edmonton.

⁴⁷Interview, November 3, 1976, Edmonton (Confidential source).

CHAPTER 5

LAND CLAIMS VERSUS DEVELOPMENT? THE IMPACT OF THE INDIAN LAND CLAIMS CAVEAT ACTION ON THE TAR SANDS DEVELOPMENT POLICIES OF SYNCRUDE CANADA LTD. AND THE GOVERNMENTS OF ALBERTA AND CANADA

Introduction

Indian land claims have held such an important contemporary significance largely because they have come in conflict with energy development projects. Alberta is no exception. However, negotiations on these issues can produce compromise agreements and in this chapter, we will examine the impact of the land claims caveat of the Indian Association of Alberta and the Isolated Communities Advisory Board on the tar sands economic development policies of Syncrude Canada Ltd. and the governments of Alberta and Canada. This linkage between an Indian land claim and economic development is no accident, for every land claim settlement since the western Indian treaties of the 1870s has included an economic development package. In the 1970s, however, the questions at stake for many Alberta Indians involves industrial jobs and job training and service industry participation instead of farm ploughs and ammunition and twine. Some northern Alberta Indians still wished to preserve their traditional trapping and fishing vocations, but

for most this form of occupation provided insufficient income to support their families.

In relation to any modern energy development project, a set of general socio-economic questions are usually raised and they include:

- What will be the direct social impact of the development on local residents?
- Will local gainful employment and service industry participation result from the project?
- Will the project benefit only certain local residents or firms and not others?

These were some of the questions that northeastern Alberta non-Indian residents and the Indian communities of that area and the Indian Association of Alberta (IAA) were asking as the magnitude of the Syncrude project near Fort McMurray became known. Historically, Indian people have generally benefitted very little by way of employment in the economic boom that has followed the oil discovery at Leduc, Alberta.¹ It remained, therefore, a very real and burning issue for the Indian leaders--Would the economic "burst of energy" in northeastern Alberta in the seventies again largely bypass their people, as it had done some thirty years earlier in south-central Alberta? Contemporary analysts of the tar sands development and northern development in general were asking similar questions about the social costs of development.² Indeed, government officials themselves

appeared to raise deeper questions of the tar sands development by their justification of government equity participation in Syncrude in order ". . . to make the corporate interest coincide more closely with the national interest."³

These questions and concerns provide background for the specific focus of this paper, namely: Did the Indian Association of Alberta and the Isolated Communities of northern Alberta acting as a pressure group have any impact on the development policies of Syncrude Canada Ltd. and the governments of Alberta and of Canada? I will try to show that this question can be answered affirmatively in the instances of Syncrude Canada Ltd. and the Government of Canada. On the other hand, the Alberta government seems to have not been influenced to change its policies of economic development by the pressure group tactics of the Indian Association of Alberta (IAA) and the Isolated Communities.

In order to proceed with the question analytically, I will use the basic premises that all the major Syncrude participants negotiated or bargained very hard to maximize their individual interests with conflicts inherently part of this process, and that the relative strengths of the various participants determined the final outcome. A logical extension of these premises is that where two or more bargaining parties or interests agree to a definite position or course of action and therefore form an alliance on a particular issue, these allied negotiators may well have the strength

to achieve a successful result from their point of view. The factor of intergovernmental relations generally and the legal remedies noted in the last chapter continue to be of importance.

To relate these analytical perspectives to the post-Winnipeg Syncrude negotiations, it is safe to assume that conflict over the status of this huge project was continuous until all of the major issues were resolved.⁴ Similarly, after February of 1975 all the major participants in Syncrude (Imperial Oil Ltd., Canada Cities Service Ltd., Gulf Canada Ltd. and the governments of Canada, of Alberta and of Ontario) could be counted upon to try to maximize their relative economic and social positions in terms of any final agreements.⁵ The Indian Association and the Isolated Communities of northern Alberta became involved in the overall negotiations for the Syncrude project only indirectly through their "caveat" on land in Northern Alberta, including the Syncrude site, which if upheld in the courts, would delay the project. They were, however, able to find an ally in the federal government, and the government of Canada effectively pressed the Indian interests of jobs and service industry participation to fruition. Federal and Indian pressure resulted finally in signed agreements on July 3, 1976 between the IAA, the Federal Government and Syncrude Canada Ltd. (see Appendix 8).

Initially I will examine the background of the IAA's involvement in this question during the period roughly 1971 to 1975. However, the critical period for our concerns lies

between the signing of the Winnipeg agreements in February 1975 and the subsequent final Syncrude agreements in April and July of 1976. The July agreements will be examined analytically in order to assess the impact of the IAA on the policies of Syncrude Canada Ltd. and the Federal Government.

A. 1971-75--Promises, Promises, Promises
and the Evolution of an Indian
Development Strategy

A share in the tar sands "action" has long been a concern of Harold Cardinal, president of the IAA for some nine years. The roots of his concern are both material and symbolic. They are "material" in the sense that Cardinal has wanted guarantees related to: a) a variety of levels of Indian job training as a prelude to meaningful employment; b) Indian businesses which could be set up to service the tar sands and other developments. Symbolically, mineral resources are very important, in that just as the Indian forefathers had shared the farm lands with the Europeans in the Alberta Indian Treaties six, seven and eight, so should the Euro-Canadians today share their mineral lands.⁶ If the whiteman did agree to share these mineral lands, then the partnership that was symbolized for Indians in the treaties could regain its proper mutual sharing aspects. However, the majority of Indian elders and leaders feel a sense of betrayal in relation to the failure of governments, particularly the Alberta government, to share the vast revenues acquired through the development of mineral resources. There was no mention of

minerals at the treaty negotiations, and most Indians of Alberta still believe that they either own or have rights to those minerals. This is a powerful ideological factor and effectively guaranteed political support for the IAA leadership when the tar sands action was commenced.

The material concerns, if not the symbolic, are clearly a matter of day-to-day survival for most Indians in northern Alberta. Unemployment levels are consistently near 80 percent and the attendant social ills of alcoholism, family breakdown and youth suicide create havoc among the families of once proud hunters, trappers and fishermen. Welfare brings some relief, but the patterns of dependency seem to insure that the vicious cycle of poverty will remain. Indian leadership in these communities, with a few notable exceptions, has similar problems. In Fort McMurray and Fort McKay these problems are aggravated by the sharp material dichotomy between Indian and non-Indian communities and the rising expectations of the native people. For the Indians living in the bush and lake country west of the tar sands, some semblance of the old ways remains. However, those isolated communities feel threatened with no permanent land tenure in the face of increasing highway, lumbering and oil exploration and development. It was this lack of land tenure in the midst of development that was the overwhelming factor that led the isolated communities to call upon the assistance of the IAA, initially to do research, but later to undertake

actual negotiations of their land claim.

Specific research in the form of a comprehensive "Northeastern Alberta Workforce Survey" was completed by the Alberta Native Development Corporation, and this study confirmed an unemployment rate of close to 80 percent for the 4700 Treaty Indians and 3100 Metis of the area.⁷ The employment statistics summary of the report includes the following background information:

Employment statistics . . . indicate that the problem of unemployment among native people of Northwestern Alberta has reached alarming proportions. A number of interacting forces seem to be contributing to the high unemployment rate of 78.8% . . . among the Native people surveyed in this area. Low levels of education, isolation from training centres, problems of relocation and the lack of economic development in Native Communities appear to be some factors contributing to this.

In addition to the high percentage of people unemployed, statistics . . . show that 35.5% of the employed labor force are in temporary part-time positions. Occupations predominantly filled by Native people include low skill service occupations (20.1%), occupations related to social work and field operations (13.4%), equipment operators (8.4%) and construction laborers (6.9%).⁸

The desperate unemployment picture was destined to be one of the prime motivating factors for the Indian Association of Alberta's President when the tar sands caveat action was launched.⁹

At the Great Canadian Oil Sands plant a few efforts had been made to involve the Indians. A native person was hired to co-ordinate company plans to increase native employment. By June of 1975 the company described their training program as follows: "Key feature of the G.C.O.S. program is T.O.J.

(training on the job)."¹⁰ The TOJ program has been largely funded by the federal government Department of Manpower and Immigration and hardly qualifies as an innovative program to deal with the special problems of Indian employment. At the same time Syncrude also had a native employment co-ordinator, and their program showed a greater understanding of the Indian problems of adjustment into the industrial society.¹¹ Nevertheless, both companies had a great deal of management discretion, and did not take these programs too seriously and appeared not to be concerned about insuring benefits to the indigenous Indian population.

For Harold Cardinal and the Board of Directors of the IAA, the efforts of the companies fell short of the mark. Similarly, requests for secure funding to enable an Indian controlled vocational training program were turned down and the Indian Association of Alberta was forced to shut down its Alberta Indian Education Centre in the spring of 1975.

A clue to the direction in which the Indian Association of Alberta might move was already provided at its annual meeting in 1974, when Cardinal announced that he believed that legal action within one year to stall tar sands development would be necessary, if Indian demands for economic benefits at the tar sands were not met. He was supported by a resolution of the annual assembly.¹² At that time it was assumed widely that the Indian land claim involved the outstanding claims of the Crees at Fort Chipewyan, who had asked the IAA to negotiate their land claim.

Definite word on Indian plans came on September 30, 1975 when the IAA Executive and Board of Directors called a press conference, and Harold Cardinal announced that their legal counsel, Robert Young, had been instructed: ". . . to immediately commence legal action aimed at regaining for Indians full and total control over natural resources contained within the area known as the Athabasca Tar Sands."¹³ The reasons for this action were described by Cardinal as follows:

. . . we met with government leaders, with industry leaders, to ask, to cajole, to press for resources which would enable our people to benefit from Alberta's boom. We waited patiently for the implementation of repeated commitments. The repeated commitments were never implemented. Under extraordinary development opportunities, our participation in Alberta's boom was and continues to be the last item, if it ever was an item, in the list of priorities held by governments and industry.¹⁴

Reaction to the announcement from government and industry was one of disappointment and dismay. Frank Spragins, the president of Syncrude, called the situation unfortunate, because Syncrude had been ". . . trying to co-operate with native people."¹⁵ A day later, Brent Scott, also of Syncrude, anticipated the thrust of the Indian legal action: "Syncrude leased its present site on the understanding that the Alberta government has proper ownership of the land."¹⁶ No doubt Syncrude lawyers had been examining the Indian land claims in this area for some time.

Don Getty, then Minister responsible for Energy and Natural Resources for the Government of Alberta, asserted

that his government would deal with the move in the best interests of Albertans, and he reminded everyone how Alberta had ". . . vigorously defended against threats to provincial jurisdiction in the past."¹⁷ Apparently the Indians must be dealt with in the same fashion as federal overtures aimed at Alberta's natural resources. Getty was probably concerned about Cardinal's rhetoric of "full and total control" of the tar sands. Moreover, he had previous unpleasant experiences in dealing with Cardinal on the Stoney land claims, and, in that instance, Getty backed away from the negotiation route and apparently recommended that the government turn the whole issue over to the courts to settle. The adversary "see you in court" approach of both Indians and government in Alberta seems to be symptomatic of an underlying breakdown of trust and rapport, as well as perceived conflicts of interest.

For the Indians, however, legal action represented a definite strategy developed over a period of years as they gained experience with developers moving into their traditional hunting grounds. It has been the Indian experience that only when they take legal action to stop or delay natural resource development can they make their demands produce concrete results. The threatened or actual stoppage or delay in the tight project schedules produces a series of consequences for developers and governments, none of which is particularly welcome from their point of view. At a minimum, an uncontrollable element or variable has been

thrown into the process and their control over the project is no longer what it used to be (i.e., the "all systems go" approach breaks down). Government and Industry are consequently forced to take the Indian situation more seriously. The Indians must rely on their historic and legal aboriginal rights to the particular area in question. In contrast to labour unions, Indians do not normally have the option of withdrawing their services from a particular industry or plant. If, however, Indian groups can marshall their forces and act collectively and decisively at a particular point in history, their aboriginal rights and economic development concerns will be taken in earnest. Variations of this strategy have been used in the past decade by the Indian peoples of Alaska, the Northwest Territories and James Bay.

The results of this strategy can perhaps be most clearly seen in the case of the James Bay Cree in their dealings with the Quebec government and the James Bay Development Corporation. The James Bay Cree, after failing to make any headway in their negotiations with the Quebec government, launched a legal battle for a court injunction to stop the James Bay hydro-electric development. Judge Malouf issued an injunction on the development based on aboriginal rights of the Cree and the failure of Quebec to follow the terms of The Quebec Boundaries Extension Act, 1912 (2 George V, chapter 45). Even though the injunction was lifted by a Quebec appeal

court, the Cree appealed the decision to the Supreme Court of Canada, who, in their "Calder" judgement of 1973, had evenly split on the aboriginal rights question. At about this time when further legal proceedings were going ahead, Premier Bourassa of Quebec travelled to New York to have a bond issue floated for the James Bay Development Corporation. New York financiers informed Bourassa, in no uncertain terms, that Indian land claims must be settled before James Bay Development could be considered a safe, economically viable investment.¹⁸ Bourassa was thus forced to go back and negotiate with the James Bay Cree, and the James Bay land claims settlement was the eventual result. In this case the Cree had strange allies, and the Quebec government came to see the mutual benefit of a land claims agreement, which also included guarantees for economic development and traditional livelihoods. Even though the James Bay Cree negotiated with a "gun to the heads," because the hydro-electric project was well underway, the James Bay agreement does represent an improvement on the earlier Indian Treaties in that a written comprehensive plan for Indian and Inuit political, economic and cultural development as well as a more generous land allotment are included in the terms.¹⁹ The agreement has been widely criticized by other Indian groups, however, because aboriginal rights were extinguished.

Similarly in Alberta, Cardinal turned to the Indian strategy of initiating legal action to stop or slow

development in order that changes for his people would begin to happen. Cardinal had described this strategy a year earlier as a ". . . combined legal and political process."²⁰ When lobbying pure and simple has failed, other methods must be employed.

B. October, 1975 to July 1976--Court
Skirmishes, Negotiations under
Pressure and the Final Agreements

In announcing the exact nature of the legal action to be undertaken by the IAA Harold Cardinal stated:

. . . as a first step, our association assisted the Headmen of the Isolated Communities in presenting for registration to the Registrar of the Northern Alberta Land Registration District a caveat giving notice to all parties dealing with the caveated land of our assertion of aboriginal title.²¹

This joint action between the IAA and the Headmen of the Isolated communities north of Lesser Slave Lake is illustrative of several overlapping political issues facing those Indian communities. The IAA and its Board of Directors were concerned to gain a share in mineral revenues and to insure gainful employment at the Syncrude plant. The Isolated Communities were more concerned about land tenure for their communities, but they needed the skilled negotiating and legal talent of the IAA. Thus Harold Cardinal, a recognized negotiator with government, and William Beaver, the president of the Isolated Communities Advisory Board and a good community organizer, combined their talents and wedded the respective primary interests of both political constituencies.

The unified and consistent action that followed was therefore no accident.

The background of land claims negotiation and litigation for this particular "caveat action" should also be considered. The Indian Association of Alberta and the Isolated Communities had forwarded the land claim of the Isolated Communities to the federal government in the spring of 1975. However, by September of 1975, there was still no Ottawa-based negotiator designated by the department of Indian Affairs and Northern Development, and the department had not yet taken a position on the claim. The land claim was based on extensive oral and archival research for each of the Isolated Communities, and the entire research report titled "The Land Rights of the Isolated Communities" by Richard Daniel of the Indian Association of Alberta had been sent to the federal government.²² Likely the main difficulty faced by the federal government was that the claim was developed for both the Metis and the treaty Indians of the Isolated Communities. The federal government would have had trouble with the Metis claims, for, in the government's view, all Metis claims have been extinguished through money or land scrip during the treaty negotiations. In any event, the IAA-Isolated Communities leaders were sufficiently frustrated in their attempts to get a land entitlement claim recognized that they now turned to the route of asserting an aboriginal title to the land through the courts.

The legal instrument utilized to begin the slow process of recognition of aboriginal title to land was a caveat, which has the following legal definition:

An intimation to a judge or officer notifying him to suspend a proceeding until merits of a caveat are determined . . . A formal notice or warning given by a party interested to a court, judge or ministerial officer against the performance of certain acts within his power and jurisdiction.³³

When a caveat is registered against land, normally the land title to that land cannot be issued until the caveat is lifted. The political-economic effect of this caveat was to put everyone from land developers, to oil exploration companies, to governments on notice that an outstanding Indian land claim in northern Alberta had not yet been settled. The Alberta Indians were using this caveat action partly because it had been successfully utilized by the NWT Indian Brotherhood before Justice Morrow in the Supreme Court of the Northwest Territories.

Justice W. G. Morrow ruled in part that:

- (4) That notwithstanding the language of the two Treaties there is sufficient doubt on the facts that aboriginal title was extinguished that such a claim for title should be permitted to be put forward by the caveators.
- (5) That the above purported claim for aboriginal rights constitutes an interest in land which can be protected by caveat under the Land Titles Act.
- (6) That the provisions of the Land Titles Act permit the filing or registering a caveat such as is presented here even in the case of unpatented land.²⁴

Morrow had effectively declined from ruling on the merits of the aboriginal rights but stuck to his main point that aboriginal rights are an interest in land that can be protected

by a caveat. Therefore the caveat legal route was chosen by the Alberta Indians, upon the advice of their lawyer, primarily to put people on notice of their interest in the northern Alberta land, and to open the way to eventually establish their aboriginal rights. Further legal or negotiating steps would have to be taken to establish the aboriginal rights of the Isolated Communities. For example, the courts might later issue a declaratory judgement in favor of aboriginal rights or the federal government might recognize the land rights of the communities. The land claims caveat action itself was, however, primarily geared to slowing down development through the creation of legal difficulties for land title issuance and this would have a political and economic impact on the relevant parties.

At the press conferences Cardinal still spoke of "full and total control" of the tar sands, but the text of the press statement was more moderate and conciliating than the earlier statements, in that a legal injunction to stop work on tar sands had been rejected for the present. He concluded by saying:

We have indicated our willingness to negotiate with appropriate authorities and reach whatever agreements are necessary which will be in the best interests of our people and the members of the larger society.²⁵

Negotiations were indeed in the cards, but as John Barr of Syncrude later explained to the press:

Our position has been that Indian land claims are a matter between the natives and the federal government. The process of arbitrating these claims is not one in which we see ourselves taking part . . . If the native

people are challenging the government's right to title that's a matter for the government and natives to sort out.²⁶

However, by December of 1975 when the "caveat case" was to receive its initial hearing before Judge Lieberman of the Supreme Court of Alberta, the position of Syncrude as an interested by-stander had shifted. Their legal counsel now stood alongside the representatives of the Attorney General of Alberta and argued, among other things, that the caveat should be thrown out, because their employees were having difficulty obtaining mortgages on their houses with the threat of a caveat hanging over all the lands on the west side of the Athabasca River. It also seems possible that the private participants in Syncrude were experiencing some difficulties with their financing. The Mildred Lake site of Syncrude also lay west of the Athabasca and was part of the huge caveated area of close to 25,000 square miles lying between the Athabasca and Peace Rivers in northern Alberta (see Appendix 9 for a map of the caveat area).

Fortunately for the Indians and their legal counsel, Robert Young, Justice Lieberman did not summarily dismiss the request for a caveat. Lieberman indicated that he would be prepared to hear legal arguments on the case in the summer or fall of 1976. He seemed sensitive to the legal and social issues raised by the caveat. Further, in response to Robert Young's request, he said that he was prepared to travel to the isolated communities themselves to hear testimony from

elder Indians. These Indians were forgotten during the federal treaty eight expedition of 1899, which had followed the Peace and Athabaca River systems but did not venture to the interior. Now these forgotten communities were being asked to bear the brunt of development without a secure land base. It is significant that Lieberman was aware of this type of social issue, and perhaps we can assume that he was somewhat influenced by the conduct of Judge Morrow in the N.W.T. caveat hearings, and certainly by the impact of the Berger inquiry hearings. Even at a later date, when he decided to adjourn the entire case until the Supreme Court had rendered its judgement on the N.W.T. caveat case, Lieberman still indicated that ". . . Mr. Young could apply to the court to take evidence in advance from the native people."²⁷ The consciousness and social awareness of our times would appear to be shifting.

With the legal battles delayed until the following summer at the earliest, the Indian Association of Alberta had strengthened its bargaining position by effectively winning this legal victory of sorts in December of 1975. Now the scene shifts from the courts to negotiations. In January of 1976 Cardinal and Young met in Calgary with the Minister of Indian Affairs and Northern Development, Judd Buchanan, and his top aide, Deputy Minister Arthur Kroeger. The Indian land claims cloud still hung over Syncrude, and Buchanan was likely responding partly because of pressure

from the Syncrude participants. However, a government source has pointed to the "strong personal initiative" of Buchanan.²⁸ He believed very strongly that there ". . . is a role for the private sector in providing opportunities for Indians, and Syncrude is an obvious case."²⁹ This personal initiative of Buchanan emerges as a definite factor in the negotiations which followed. In response to the question--what do the Indians want?--Cardinal reiterated the IAA position on job training, economic development and a land base for the isolated communities. Buchanan agreed to follow up the discussions, and negotiations were effectively underway.³⁰

The aspect of job training particularly involved Syncrude Canada Ltd. and Buchanan and Cardinal insisted that they be drawn into the negotiations between the federal government and the Indian Association. At the same time, the Syncrude equity participants were entering the final stages of negotiations regarding the thorny issues of the rate of return on investment, and how the interest should be shared in additional leases. There were, therefore, two sets of negotiations occurring simultaneously.

On April 2, 1976 Don Getty, the Alberta Minister responsible for Energy and Natural Resources, was able to announce that the signing of the final agreement between the Syncrude participants was a ". . . mere formality."³¹ As events unfolded with the other negotiations, it turned out that the signing of the overall agreement at

the end of April would not be so simple.

On April 15, 1976 a draft document was circulated by Buchanan to all the Syncrude participants outlining a draft agreement between Syncrude, the Indian Association of Alberta and the Federal Government.³² Apparently there was opposition within Syncrude to the agreement. At this point Robert Young drafted a telex for Harold Cardinal to send to all of the Federal Ministers outlining the IAA concerns vis-a-vis Syncrude. The telex stressed the necessity that the final commitment of \$300 million in federal funds to Syncrude include a provision guaranteeing Indian jobs (on managerial and technical as well as unskilled levels) and Indian service industry participation. After sending the telex, both Cardinal and Young spent several frantic days pressing their concerns with officials from the Prime Minister's Office and the Privy Council office and with former Indian Affairs Minister Jean Chretien, as well as Buchanan. It was felt that both Chretien and Trudeau must be convinced of the merits of the case, or the Indian concerns would not be included in the Treasury Board minute granting the \$300 million to Syncrude. Pressure was therefore being applied by the IAA at this critical stage for fear all would be lost if the federal government did not take a strong position on this issue.

Officials from several federal departments have subsequently pointed to the fact that the government went along with the IAA request for economic development opportunities in Syncrude primarily on the grounds that this request was

in accord with its own social policy for northern development.³³ Moreover, the earlier Syncrude agreements point to the concern of Ottawa to bring the tar sands oil on stream as soon as possible. In fact, the final Treasury Board minute approving the \$300 million for Syncrude did include a stipulation relating to Indian employment and service industry participation at Syncrude.³⁴

A telex from Pierre Elliot Trudeau in reply to Cardinal signalled the federal response. Trudeau indicated that he was "sympathetic in principle" to the IAA request and would ask several ministers to ensure "serious consideration" of the request by "all parties."³⁵ During the few days preceding the signing date of the overall Syncrude agreement and the actual day it was to be signed, the federal concerns were expressed to the other participants as follows:

. . . some form of guarantee such as a letter of intent that would commit Syncrude Canada Ltd. to hiring native people and would ensure that not all those hired were in unskilled jobs. There should also be a commitment, as part of the agreement, to use native entrepreneurs for some of the service contracts such as laundry, restaurants and trucking.³⁶

The issue loomed as another Ottawa-Alberta battle, because the Alberta government was firmly opposed to the letter of intent on the grounds that it did not wish to see the Indians receive special treatment, especially if the Metis were not included in the proposed agreement.³⁷ Apparently the Ontario government was also opposed to the Ottawa requests on behalf of the Indians, because this matter had

never been discussed at the earlier Winnipeg meeting.³⁸

Negotiations went on all day Thursday, April 29, and finally on the morning of April 30th the final Syncrude agreement was signed.³⁹ The final signing was indeed more than a mere formality as the length of the negotiations indicate, but the Syncrude participants (i.e., the owner-management committee) had finally agreed ". . . on the terms of a letter from itself to Syncrude instructing the corporation to reach an agreement with the IAA along lines of a draft agreement."⁴⁰ As it turned out, on the morning of April 30th the federal government was still not clear if it could sign the agreement, and Judd Buchanan was on the phone to ". . . two oil company Presidents before they finally got the necessary signatures."⁴¹ On April 30th the Department of Indian Affairs even had a press release drafted explaining why the federal government wouldn't sign the agreement, but this was found to be unnecessary when the agreement was finally reached.⁴² By the afternoon of April 30th in the House of Commons, Buchanan took a good deal of satisfaction in replying to a question from NDP energy critic T C. Douglas that a letter acceptable to all parties had been drafted to ". . . protect the interests of native people."⁴³

Similarly, on the Indian side there was much satisfaction that the way had now been cleared for the final agreements on Indian jobs and Indian businesses on acceptable conditions.

The subsequent negotiations also proved to be more difficult than anticipated. "Ontario was negative from start to finish on Indian employment at Syncrude."⁴³ Similarly, two major Canadian oil companies--"Imperial Oil Limited and Gulf Canada Ltd. were obstructive and created many problems" before the negotiations were complete.⁴⁴ "Cities Service based in Oklahoma were far better" on this Indian employment question than were the two Canadian based oil companies.⁴⁵

In the first two weeks of May, the government of Alberta joined the Syncrude-Federal-IAA negotiations to insure Metis participation in the project but then dropped out. Ostensibly the grounds for withdrawal were that the federal government and the IAA were concerned with Indians only, and that the agreements would illegally violate the Human Rights Act of Alberta and the Individual Rights Protection Act, in that the agreements were a form of positive discrimination.⁴⁶ It appears that the heavy financial commitments involved were also a factor. In this period, Cardinal contacted Premier Lougheed, and Lougheed agreed, despite his reservation about the legal questions, not to stand in the way of the proposed agreements.⁴⁷ Lougheed's minister of Federal and Intergovernmental Affairs, Lou Hyndman, insured then that there were no other obstructions from the Alberta side.⁴⁸ In any event, following further negotiations, ten year agreements between Her Majesty the Queen in Right of Canada, Syncrude Canada Ltd. and the Indian Association of

Alberta were signed by Judd Buchanan, Brent Scott and Harold Cardinal respectively on July 3, 1976 (see Appendix 8).

C. The "Indian-Syncrude Agreements" and
their Implications for Syncrude,
Canada, Alberta, and the IAA

The text of the agreement is extremely important in evaluating the central questions of this chapter so it has been appended (see Appendix 8). A close examination of the agreements does reveal the impact of the IAA on the development policies of Syncrude and the federal government.

Firstly, Syncrude is now legally committed to an agreement which insures a fair and thorough approach in the hiring and contracting of Indians at their plants. This legal aspect represents a significant departure from the management discretion which was implicit in their earlier policy. Syncrude is now tied into this agreement for the next ten years and is subject to quarterly reviews of progress made and binding arbitration should disputes arise. While the agreement does not detract from good management or bind Syncrude in labour union negotiations, it does effectively commit them to a policy of Indian involvement in the Syncrude plants in such a way that its day-to-day operation will not be uneffected. For example, the existence in this agreement of clauses dealing with: Indian culture orientation classes for management; various special training programs; questions of discrimination against Indians; and the notification of requests for tender to Indian businesses, are indicative of this last point. There will also most certainly be additional costs involved for Syncrude by the

nature of the agreement.

Similarly, the federal government is also legally committed to these agreements, and at least a three million dollar outlay of funds to insure the operations of the "Indian Oil Sands Development Corporation" and the "Indian Equity Foundation" is required. In this time of a general restraint on federal spending, this is not an insignificant contribution. As I already noted regarding the Cabinet decision, if one goes to the roots of the existing federal policies related to Northern development and Indian economic development, it is clear that these agreements do not represent new policy. However, what is important is that these social policies of Indian employment and business opportunities have been effectively integrated with the federal energy policy of self reliance and implemented in these agreements. I believe that it has been demonstrated that this would not have happened without the IAA putting effective pressure on the Federal Cabinet and thus gaining an ally in the process. It also would not have happened if Judd Buchanan had not taken a personal interest and initiative on these questions.

Thirdly, it seems clear that the government of Alberta, by not being a party to these agreements, and indeed opposing them both before and to some extent after the signing, has not affirmatively changed its social policy for tar sands development in relation to Indians. If anything, the IAA has put the Alberta government on the "defensive" in

this regard. In the next chapter, we will examine the political stance of the Alberta government in 1977 vis-a-vis the ongoing land claims caveat action.

Fourthly, I must also point out that Judd Buchanan refused an IAA request late in July of 1976 to fund the Indian legal costs for the tar sands caveat. While the IAA never agreed to drop the caveat in any of the negotiations and agreements mentioned thus far, it may be surmised that the other Syncrude participants put pressure on the federal government to take this action. Several times during the negotiations Syncrude ". . . tried to have the Indians drop their caveat in the tar sands area," according to Lorne Mowers, a negotiator for the federal government.⁴⁹

Further evidence that the strong alliance exhibited between the federal government and the Indian Association of Alberta during a critical stage of negotiations may be breaking down is the federal intervention against the caveat in the court proceedings in September of 1976. If treaty eight is held to be invalid, that may jeopardize other Indian treaties across the country, and the federal government fears the implications. This would also constitute grounds for not funding the Indian caveat legal costs.

Finally, the agreements do improve the chances of Indian training and business at Syncrude. Both Cardinal and Young figure heavily in the new "Indian Oil Sands Development Corporation," and this is to be expected for without these

tough, talented negotiators it is hard to believe that any agreement would have been signed.⁵⁰ On balance, these agreements, while they are certainly not a panacea for all the social ills of the Indian people, do represent a small, yet important, step in the right direction. As of July of 1977, the "Indian Oil Sands Development Corporation" and the "Oil Sands Equity Foundation" have been formally constituted and are beginning to assist the process of Indian service industry participation in Syncrude and elsewhere in Alberta.

Syncrude has recently announced that some 82 treaty Indians are permanently employed with Syncrude as of June, 1977.⁵¹ An Indian Association of Alberta source disputes this employee total and suggests the implementation of the Syncrude agreements would be improved with a native person heading up Syncrude's native employment section.⁵² In spite of all the initial growing pains, the "Indian-Syncrude agreements" of 1976 still represent an important breakthrough for Indians in the province.

Concluding Comments

In conclusion, I believe it has been shown that when the IAA was able to act collectively and in concert with its member communities, and when aboriginal land rights could be used in the courts to provide enhanced bargaining strength, then the Indian Association of Alberta as a pressure group did have an impact on the development policies of the federal government and of Syncrude. It was important that the IAA

had a key group of negotiators who were able to put on pressure in the federal Cabinet at a crucial time. However, the eventual agreements presuppose a particular set of circumstances, especially a sympathetic minister and a government with a developed social policy on the relevant questions. Moreover, general intergovernmental relations between Canada and Alberta did not present overwhelming problems. These conditions are obviously not always present. Nevertheless, considering the extent of the opposition to these Indian-Syncrude agreements, this case study does provide some helpful signs and clues for other pressure groups attempting, with few financial resources compared to powerful business interests, to effect change in the political process.

From this study of a successful economic development settlement for the Indians of Alberta, we can now move to the sixth chapter and the final consideration and integration of our concerns with regards to policy-making structures and settlements vis-a-vis Indian land claims in Alberta.

FOOTNOTES--CHAPTER 5

¹H. B. Hawthorne, ed., A Survey of Contemporary Indians in Canada--Economic, Political, Educational Needs and Policies, Part I (Ottawa, Queen's Printer, 1967), p. 151.

²L. Pratt, The Tar Sands--Synchrude and the Politics of Oil (Edmonton, Hurtig, 1976), p. 114. Also see K. J. Rea, The Political Economy of Northern Development (Ottawa, Science Council of Canada, 1976), p. 230.

³J. Maxwell, Developing New Energy Sources: The Synchrude Case (Montreal, C. D. Howe Research Institute, 1976), p. 25.

⁴Pratt, op. cit., pp. 145-178.

⁵Equity Participation following Winnipeg February 1975 agreements as follows:

	%	Millions of \$
Imperial	31.25	625
Cities Service	22.00	440
Gulf	16.75	335
	<u>70.00</u>	<u>1400</u>
 Ottawa	 15.00	 300
Alberta	10.00	200
Ontario	5.00	100
	<u>30.00</u>	<u>600</u>
TOTAL	<u>100.00</u>	<u>2000</u>

⁶Speech to the Queen, July 1973, Calgary.

⁷Alberta Native Development Corporation, "North-eastern Alberta Workforce Survey," Edmonton, Mimeo, May, 1975.

⁸Ibid., Section 1, Employment Statistics Summary, p. 1.

⁹Conversation between the author and Harold Cardinal, Fall, 1975.

¹⁰The Edmonton Journal, June 7, 1975, p. 61.

¹¹Ibid.

- ¹²The Edmonton Journal, June 22, 1974, p. 65.
- ¹³Indian Association of Alberta Statement to the Press, September 30, 1975, p. 1.
- ¹⁴Ibid., p. 3.
- ¹⁵The Edmonton Journal, October 1, 1975, p. 1.
- ¹⁶The Edmonton Journal, October 2, 1975, p. 44.
- ¹⁷Ibid.
- ¹⁸Denis Chetain, a close associate of John Ciaccia, the chief negotiator for the Quebec government, revealed this information at a lecture at the University of Alberta Law School in the spring of 1975.
- ¹⁹"The James Bay and Northern Quebec Agreement" (Ottawa, Indian and Northern Affairs, 1976).
- ²⁰The Edmonton Journal, June 30, 1974, p. 50.
- ²¹"Indian Association of Alberta statement to the press," mimeo, October 27, 1975, p. 2.
- ²²Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta," Edmonton, Indian Association of Alberta, mimeo, January, 1975.
- ²³Black's Law Dictionary, Rev. Fourth Edition (St. Paul, West Publishing Co., 1968), p. 281.
- ²⁴Conclusions of the Judgment of W. G. Morrow cited in Reasons for Judgement of Justice A. F. Moir, in the Court of Appeal of the Northwest Territories, In the Matter of An Application of Chief Francois Paulette et al. to Lodge a Certain Caveat with the Registrar of Titles of the Land Titles Office for the Northwest Territories, Nov. 1, 1975, p. 3.
- ²⁵"Indian Association of Alberta Statement to the Press, mimeo, October 27, 1975, p. 4.
- ²⁶The Edmonton Journal, October 28, 1975, p. 1.
- ²⁷St. John's Edmonton Report, September 13, 1976, p. 15.
- ²⁸Interview, June 13, 1977, Ottawa (Confidential source).

²⁹ Ibid.

³⁰ Conversation between the author and Harold Cardinal after the meeting in question.

³¹ Globe and Mail, April 2, 1976, p. B-1.

³² Globe and Mail, May 1, 1976, p. 10.

³³ Interviews, Ottawa, June 8-13 (Confidential sources), For documentary references, please see the Northern Development Policy Statement, Jean Chretien, Appendix to the Report of the Standing Committee of Indian Affairs and Northern Development, March 28, 1972. For example, the Social Improvement guidelines for all agencies and departments in the north include:

- "(i) Consciously create in government and industry employment opportunities for native peoples through attractive incentives, meaningful targets and where necessary imposed obligations.
- (ii) Re-orient employment practices of government and industry in order to provide intensive training, not only in preparation for foreseeable employment but including on-the-job training" p. 3-37.

³⁴ Interview, June 8, 1977, Ottawa (Confidential source).

³⁵ Telegram of P. E. Trudeau to H. Cardinal, April 30, 1976.

³⁶ Globe and Mail, April 30, 1976, p. 9.

³⁷ Ibid.

³⁸ Ibid.

³⁹ The Edmonton Journal, May 1, 1976, p.15, and The Globe and Mail, May 1, 1976, p. 10.

⁴⁰ The Globe and Mail, May 1, 1976, p. 10.

⁴¹ Interview, June 13, 1977, Ottawa (Confidential source).

⁴² Ibid.

⁴³ J. Buchanan, Hansard, April 30, 1976, p. 13036.

⁴⁴ Interview, June 13, 1977, Ottawa (Confidential source).

⁴⁵Ibid.

⁴⁶The Edmonton Journal, Saturday July 10, 1976, p. 58.

⁴⁷Interview, Nov. 3, 1976, Edmonton (Confidential source).

⁴⁸Interview, June 13, 1977, Ottawa (Confidential source).

⁴⁹Speech at St. Paul, DIA--Chiefs meeting, September 1976.

⁵⁰Cardinal is the new president of the Indian Oil Sands Development Corporation and Young is the Secretary-Treasurer. It is doubtful, however, that Cardinal will be allowed to continue as the Indian Association of Alberta representative on the board of this corporation now that he has taken a job as regional director for the Department of Indian Affairs.

⁵¹The Edmonton Journal, Tuesday, July 5, 1977, p. 23.

⁵²Interview, June 30, 1977, Edmonton (Confidential source).

CHAPTER 6

THE FUTURE OF ALBERTA INDIAN LAND CLAIMS

Introduction

In this chapter, I will assess the policies of legal obligation noted in chapters two, three and four, and consider the possibility of moving beyond those policies as regards Indian land entitlements and land surrenders in Alberta. In the course of this evaluation I will examine recent policy development (1976-77) of the governments of Canada, of Saskatchewan and of Alberta. I will conclude with an analysis of the position of Canada and Alberta regarding our central concerns of structures and settlements.

A. The Problem of the Lawful or Legal Obligation Policies of Canada and Alberta vis-a-vis Indian Land Claims

The analysis in chapters two and three has indicated an entrenched "lawful obligation" treaty claims policy of the federal government evidenced in the 1969 White Paper and the subsequent policy statement of Aug. 8, 1973.¹ However, the second 1973 policy statement left open the possibility of a revision to federal policy in their recognition of ". . . the importance of full compliance with the spirit and terms of your Treaties"² (emphasis mine). Similarly, we noted in chapter four how the government of Alberta has seen Indian treaty land entitlement claims in the narrow, strict terms of "legal obligation."³

With the policy statements of both governments

couched in the terms "lawful" or "legal obligations," then ipso facto these policies have required interpretation by the Department of Justice for Canada and the Attorney General's Department of Alberta respectively. While it is beyond the scope of this thesis to examine the political culture of these two departments composed mainly of lawyers, I think it can be assumed that the people involved are accustomed, through their training and experience, to dealing with the adversary system of the court room. Therefore, Indian band claimants tend to be viewed as the adversaries and the job of government lawyers tends to be to protect the interests of their clients, namely the government. When it comes to interpreting "lawful or legal obligations," the Department of Justice of Canada and Alberta's Attorney General's Department tend to use this umbrella-like policy to cover a host of legal opinions on specific fact situations of Indian land claims. When the facts are absolutely incontrovertible, such as the unfilled treaty land entitlement of the Fort Chipewyan Cree Band, then the legal departments accede to the validity of the land entitlement. However, where there is some doubt as to the facts or the legal validity of the claim, then the general stance of both government departments tends to be--"prove to us in court that you have a claim." This is particularly the case for land surrender claims (category #3 of our earlier analysis) and this adversary--"see you in court approach"-- is usually the case for the treaty land

entitlement claims (category #2 of the chapter one analysis). One such land entitlement claim--the Bighorn Stoney claim, somehow got through the careful scrutiny of the federal Department of Justice but then "floundered on the rocks" of the provincial Attorney General's department. The aboriginal rights claim of the Isolated Communities, a Category #1 claim of the earlier analysis, has been opposed in the Supreme Court of Alberta by both the Attorney General of Alberta and the federal Justice department. Aboriginal rights claims in the treaty eight area will not be countenanced by both governments, partly on the general implications for other Indian treaties if treaty eight was overturned, and partly on the implications for the N.W.T. Indian Brotherhood's claim if treaty eight was thrown out.

Further evidence of the stance of the Department of Justice is found in the present state of all other contemporary Alberta Indian land claims that have been considered by the federal government. The land surrender claims of the Enoch and Peigan bands are presently before the Federal Court of Canada on the Indian initiative, because the negotiations between these bands and the federal government had broken down.⁴ The land entitlement claim of the Blood band is either before the court or soon to come before the court for the same reason.

These dominant roles of the federal Department of Justice and the provincial Department of the Attorney General must be related to the respective governmental departments/

agencies that have been specifically charged with the responsibility of negotiating Indian land claims. In the case of the federal government, the Department of Justice gives the final word on all claims that come through the Office of Native Claims, a renamed successor to the earlier Office of Claims Negotiations.⁵ The following Cabinet document outlines the role of Deputy Attorney General for the Department of Justice in the resolution of specific claims:

The Government's primary objective continues to be to discharge lawful obligations, as determined by the courts if necessary; and, subject to reviews by Ministers of specific proposals for settlement, the government be prepared to negotiate specific claims where the Deputy Attorney General is satisfied that the claim has sufficient validity to warrant negotiation.⁶

The use of the term "specific claims" refers to all claims under the treaties and the Indian Administration. On the other hand, "comprehensive claims" denote the aboriginal rights claims which have already been described. Thus the dominant role of the Department of Justice and the lawful obligation policy continues, even though there had been a significant breakthrough in the policy-making process by way of the "Indian Rights Process." The Office of Native Claims is still active and is processing claims, although it will be definitely affected by any changes in claims policy that might be worked out through the Indian Rights Process. I will consider these potential policy changes later in this chapter.

The government of Alberta has similarly allowed their Attorney General's department to play a dominant role in the

settling of Indian land claims. A provincial government source has indicated the crucial and primary role of the current Attorney General, Jim Foster, in the Cabinet committee deliberations regarding an Indian claims policy.⁷ Similarly, Attorney General Foster has apparently been mandated to give public announcements regarding Indian land claims negotiations.⁸ The provincial Federal and Intergovernmental Affairs department has until very recently been the department responsible for Indian land claims negotiations, but it now appears that the Attorney General has de facto taken over the primary negotiating role for Alberta, as evidenced by the following comment of a federal official:

question-Does the Attorney General in Alberta play a prominent role in land claims negotiations?
 answer -Yes---That's a very good point. We always know that we will get nowhere with serious land claims negotiations if the Attorney General of the province is front and centre. This is the case for both Alberta and British Columbia. Indeed, the federal Department of Justice played a similar role on aboriginal rights discussions before the 1973 change in policy.⁹

B. New Policy Developments of the Government of Canada

One way of moving beyond the rigidities of the lawful obligations policies of both governments is to develop land claims policy in the broader framework of social or socio-economic policies. This is the conclusion of Dr. Barber in a recent speech:

In my mind, the key to resolution of treaty problems is to look to the spirit of the treaties. If the issues

are approached in this way, I think that we will find that while there is substantial disagreement about what the Government was legally bound to provide, there is very good potential for agreement in terms of what the Government might, in fact, provide in the way of developmental assistance today.¹⁰

In recent interviews both federal and provincial officials acknowledge that placing land claims in the context of a social policy would provide a way out of the present legal impasse.¹¹ By contributing to Indian socio-economic development, land claims settlements can be regarded as social policy. In the period from July 1976 to July 1977, the governments of Canada, Saskatchewan and Alberta did develop new policies, both in terms of their overall relationships with Indian peoples, and in terms of land entitlement claims policies. By evaluating these recent developments, it will be possible to make a current assessment of the future of Alberta Indian land claims.

In terms of the overall relationship between Indian peoples and the federal government, the most significant recent development was the Cabinet approval of the policy paper "An Approach to Government-Indian Relationship." This document has received a wide circulation among Indian leaders and the staff of the Department of Indian Affairs, and federal sources indicate that it forms the basis of current and future policy planning and program implementation.¹²

(For these reasons I have appended the entire text of the paper--see Appendix 10). This policy paper, although written by a top DIA official and submitted to Cabinet by the Minister apparently without Indian consultation, did

incorporate the basic joint-policy making principles of the "Indian Rights Process." Importantly, it changed direction from the assimilationist thrust of the 1969 White Paper, insofar as it advocated a preservation of Indian status. On this point the Cabinet eschewed the extreme positions and advocated that:

The Government's relationship with the group recognized as status Indians is based on the concept of Indian identity within Canadian society rather than on separation from Canadian society or assimilation into it.¹³

The gist of the new federal policy paper is summarized in the following covering letter, which Judd Buchanan sent to George Manuel:

The attached paper outlines an approach approved by Cabinet to strengthen the Government-Indian relationship and to improve the situation of the Indian people. The emphasis is on processes of joint participation in policy/program developments with Indian leadership at all levels. Nationally, the Joint NIB/Cabinet Committee process is already in place. Other joint working arrangements have been or are being established at provincial and band levels.

Underlying this approach of joint participation is the concept--Indian identity within Canadian society--which envisages the continued recognition of Indian status treaty rights and special privileges resulting from land claims settlements. There will be, as well, special programs and services based on needs because of the disadvantaged situation of many Indian communities and individuals.

The emphasis of the joint approach is on flexibility and responsiveness. It is an acknowledgement that the diversities of Indian communities in Canada rule out a single universal strategy for policy/program development . . .¹⁴

The new federal policy paper was given extensive discussion at the regional and local levels. In Alberta, a workshop was held between the IAA Board of Directors and

senior officials from the DIA Alberta region in December 1976, and subsequently the local DIA officials met with local Indian bands.¹⁵ At the regional and local levels, the stress was placed on joint program implementation, while the joint policy-making would continue to be a national question for the Joint NIB/Cabinet Committee.

However, some problems with the new policy paper were particularly evident at the national level. At the National Indian Brotherhood Assembly in September of 1976, the Assembly passed a resolution rejecting the Government-Indian Relationship paper and resolved to set up an in-house NIB Indian Policy Secretariat.¹⁶ Some member organizations of the NIB feared "assimilation through cooperation," according to the incoming NIB President, Noel Starblanket of Saskatchewan.¹⁷ Similarly, the NIB wished to strengthen its own capabilities for Indian policy development and by the spring of 1977 had obtained funding for its Indian policy secretariat. At the same NIB Assembly the new Minister of Indian Affairs, Warren Allmand, indicated that he wished to work closely with Indian leaders and jointly agree on new approaches to the problems. Subsequently, Noel Starblanket and Warren Allmand had a series of meetings every two weeks starting in the fall of 1976.¹⁸ As a measure of trust developed between these two key actors by the spring of 1977, circumstances correspondingly improved for rejuvenation of the Indian Rights Process.

The Joint Sub-Committee on Indian Rights and Claims.

met on June 27, 1977. This committee now contained a number of new faces. On the government side, Allan MacEachern replaced Marc Lalonde as chairman, in light of the fact that government House leader MacEachern could devote more time to the job than Lalonde, who had heavy Health and Welfare Department duties.¹⁹ Warren Allmand, another newcomer and Ron Basford, the Justice Minister made up the balance of the federal government's committee members. On the NIB side, Dave Ahenakew of Saskatchewan replaced Harold Cardinal as the prairie Indian representative, because the IAA Acting President, Simon Waquan, preferred that Ahenakew sit on the committee. The new NIB President, Noel Starblanket, and the Ontario Indian representative John P. Kelley completed the NIB side. By this time, both Brian Pratt and Patrick Hartt, the new Canadian Indian Rights Commissioners, had been appointed for the prairies and Ontario respectively, and they also attended the meeting. Thus a whole new group of key political actors were now involved in the Indian Rights Process.

On July 11, 1977, the Joint NIB/Cabinet Committee met in Ottawa and discussed the following agenda items: Taxation; Canadian Indian Rights Commission; Indian Policy Development Secretariat; MacKenzie Valley Pipeline; British North America Act; Education Revisions to the Indian Act; Economic Development and Creating Indian Companies.²⁰

The facilitating role to be played by the Canadian

Indian Rights Commission is of particular importance for the eventual resolution of Indian land claims. The new Commission made the following claims-related proposals:

1. The Commission will assume the responsibility for the Secretarial function for the Joint Committee, the Joint Sub-Committee, and all working groups under the Joint Committee.
2. The Commission will assume the responsibility for the chairmanship of all Working Groups under the Joint Committee.
3. The Commission will undertake to generally facilitate the business of the Joint Committee, so that issues, are most effectively brought forward and resolved.
4. The Commission will explore the possibilities of a claims inventory with Indian Associations in Ontario and the Prairies and report to the Joint Committee.
5. The Commissioners will be available to arrange for third party information or opinion on questions referred to them by the Joint Committee.
6. The Commission will assist in tripartite negotiations with the Provinces, as agreed by all three parties.²¹

The approval of these proposals amounts to a vote of confidence by both sides in the Canadian Indian Rights Commission (CIRC) and it also strengthens the role of the Commission particularly through the addition of the above mentioned secretarial and chairmanship functions. The "Indian Rights Process" structure is therefore fully in place. Interviews with government, NIB and CIRC officials indicated that all three parties are now ready to move forward with the process.²²

In terms of the issue of Indian land claims, the Indian Association of Alberta Board approved "Indian Land Entitlement" and "Indian Land Surrenders" position papers in June of 1977, and assuming the newly elected IAA Board of

Directors also approves these position papers, they will go forward for discussions with the National Indian Brotherhood. Eventually, it can be assumed that the National Indian Brotherhood will present its land claim position papers for resolution through the joint policy-making of the Indian Rights Process.²³ However, while the issues of Indian land claims--particularly the legal and social obligation aspects of policy--will take much subsequent negotiation to find agreement first within the NIB and then with government, the necessary preconditions are in place. Here I am referring to the facts that the key political actors on both sides are committed to resolving these issues, and that a mutually acceptable structure for dialogue--the Indian Rights Process--is now operative. In my view, the commitment of key political actors and mutually accepted structures for dialogue are the primary factors for the analysis of this land claims question, and the land claims issues themselves are slightly less important. This point can be further illustrated through the graphic presentation in Diagram D, which is a modification of our earlier Diagram A in chapter three. To state my conclusion in another way, the issue of Indian land claims must be developed, refined and modified to suit the key political actors involved in the Indian Rights Process, before it will emerge as a new mutually acceptable land claims policy. The Indian Rights Process allows this to happen. The key political actors will ensure that joint policy-making occurs, if it

DIAGRAM D

INDIAN LAND CLAIMS POLICY PROCESS (1977)

NIB INTERNAL PROCESSES

Indian Associations
and National Indian
Brotherhood

Formulates and
presents general
positions on Indian
Land Claims

Basic
Issues

THE INDIAN RIGHTS
PROCESS (1977)

Joint NIB/Cabinet Committee
-sets up joint work group &
directs CIRG to facilitate
joint work group process

Joint Work Group on
Land Claims Policy
-develops joint
policy proposals

Joint Sub-Committee on
Indian Rights & Claims
-approves or modifies
policy proposal

Joint NIB/Cabinet Committee
-approves policy proposal &
Cabinet Ministers take it
to Cabinet Meeting

GOVERNMENT INTERNAL
PROCESSES

Federal Cabinet

New Policy and
Mutually Agreeable
Implementation
Procedures

happens to all. If some of the key political actors are changed, for example, at the ministerial or Indian leader level, then the whole process is slowed down, but with this new structure in place, and the continuity of advice from the official level and Canadian Indian Rights Commission, and the issue of Indian land claims remaining outstanding, the solid potential for resolving or improving federal Indian land claims policies remains. There is, however, a lag between the structures being in place and the settlements based on new policy actually occurring.

C. The New Position of the Saskatchewan Government

Also in the past year, important land claims policy developments have been occurring at the federal-provincial level that may well have an eventual impact on national Indian land claims policies. Here I am referring to the agreement in the spring of 1977 between the government of Canada and the government of Saskatchewan regarding treaty land entitlement policies for that province. Warren Allmand sets out, in the following letter to an Alberta government minister, the interpretation of the Canadian government regarding the socio-economic importance of treaty land entitlement generally and the Saskatchewan-Canada agreement specifically:

. . . . I should like to outline for you my government's views respecting the fulfillment of outstanding land entitlements. As you may know, it is our stated policy to fulfill our obligations flowing from Indian legislation and historical treaties with the Indian people. In so doing, we are also aware of the important role which meeting the outstanding obligations can play in guaranteeing the future socio-economic viability of Indian people within the larger Canadian society.

However, in meeting our responsibility to provide Indian bands in Alberta, Saskatchewan and Manitoba with

their land entitlements pursuant to the treaties, the federal government is bound by the Natural Resources Transfer Acts which require agreement between a designated provincial Minister and myself as to the selection of lands. In understanding such action, I would hope that we could meet the concerns of all parties concerned particularly the Indian people.

In this context, I would refer you to the proposal recently put forward to the Federal Government by the Province of Saskatchewan respecting the settlement of outstanding land entitlement pursuant to treaty. Arrived at in consultation with the Federation of Saskatchewan Indians, the Saskatchewan proposal puts forward a formula for calculating outstanding entitlement utilizing present population figures for a Band affected, times the per capita acreage as set out in the applicable treaty. In cases where bands have received some land, the area already allocated is subtracted from the above total. In Saskatchewan the population figure has been fixed as of December 31, 1976; beyond that date entitlement will not grow.

My Cabinet colleagues and I have been encouraged by the Saskatchewan proposal and were pleased to approve it. In our view it provides a basis for finally resolving the remaining obligations to provide land under treaty in a way that meets the needs of Indian Bands concerned. In light of the Saskatchewan proposal we would like to discuss with you the possibility of reaching a settlement of all outstanding treaty land entitlements in Alberta.²⁴

(The full text of this letter and the related correspondence is appended---see Appendix 11.)

Several sources close to the Saskatchewan negotiations have pointed to a crucial ". . . combination of circumstances which make land claims settlement possible" and which were present in Saskatchewan.²⁵ One important factor relates to the credibility of the relevant provincial minister, Mr. Bowerman with his Cabinet colleagues. Bowerman, the Minister responsible for Northern Saskatchewan, is ". . . from northern Saskatchewan and knows the Indians well and there is trust and confidence on both sides.

Moreover, Bowerman holds a measure of political clout in the Saskatchewan Cabinet."²⁶ Secondly, the Federation of Saskatchewan Indians is "perceived" by the NDP government in Saskatchewan to have a definite political strength, in that the FSI is believed to be a strong, cohesive organization that is able to deliver votes for the NDP.²⁷ Some FSI executive members sit on NDP constituency organizations and some former NDP policy advisors have recently taken staff positions with FSI, and therefore there is some concrete linkage between the governing NDP party and the FSI.²⁸ FSI President Dave Ahenakew claims that the FSI controls the swing vote in 17 provincial constituencies.²⁹ John Richards, a close observer of the Saskatchewan political scene, suggests in a recent article on potash nationalization that the dramatic Tory revival in the last provincial election may have ". . . instilled a sense of mortality into much of the N.D.P. leadership, the idea that the days of the government might be numbered."³⁰ Did this apparent political vulnerability cause the NDP leadership to firm up the support of their allies, such as the Federation of Saskatchewan Indians? In any event, the Federation of Saskatchewan Indians representing a treaty Indian population of over 40,000 Indians was perceived to have a political impact on a province with a population of over 900,000.³¹ In this connection, it should be noted that Alberta has a smaller treaty Indian population (30,000+) and has about double the total current

population of Saskatchewan. Another factor appears to have been the extremely high percentage of treaty Indians in urban centres of Regina and Saskatoon, and the consequent potential for both Indian social unrest and political problems for the Saskatchewan government.³² In terms of the factor of unoccupied Crown land, Saskatchewan's north is comparatively undeveloped, at least in relation to the extensive transportation, oil sands and farming developments of northern Alberta, and consequently they are in a somewhat better position to provide the necessary land.³³ In the south, the Saskatchewan government has taken the negotiating position that the federal government should purchase the needed land for the Indian bands.³⁴ Finally, this new treaty land entitlement position of the NDP government in Saskatchewan apparently is consistent with their social development policies for the province, otherwise it is inconceivable that they would go ahead with this generous land entitlement policy. One federal official has described this new Saskatchewan social policy as embodying the "spirit" of the treaties.³⁵

D. The New Alberta Government Position on Land Entitlement

The analysis of chapters four and five along with the above noted comparisons between Saskatchewan and Alberta already make it reasonably clear that the crucial set of circumstances necessary for land claims settlement is not present in Alberta. The policy developments of the last year in Alberta serve to confirm this analysis.

Firstly, Indian land claims policy has recently been

developed unilaterally by the government of Alberta, through "in-house" committees at the official and Cabinet levels. According to an official source in the provincial government the Cabinet Committee on Native Land Claims and a corresponding interdepartmental committee of officials was set up in the fall of 1976.³⁶ In a recent letter (June 9, 1977) to the Indian Association of Alberta, Lou Hyndman, the provincial Federal and Intergovernmental Affairs Minister describes the composition and purpose of the new Cabinet Committee:

I wish to advise that a Cabinet Committee on Native Land Claims has been formed.

The Committee consists of the Honourable Bob Bogle, Minister Without Portfolio Responsible for Native Affairs; Honourable Jim Foster, Attorney General; Honourable Dallas Schmidt, Associate Minister of Energy and Natural Resources and Minister Responsible for Public Lands; and myself as Chairman.

The purpose of the Committee is to continue the coordination, with respect to native land claims, as between the various government departments involved from time to time. Because the Committee is advisory to Cabinet, its agenda and its decisions are, of course not made public.

It is desirable that there be a contact person within the Government of Alberta to whom all inquiries, phone calls, correspondence etc., are directed, in respect of all matters involving native land claims. That contact person is Mr. Cal Lee, Executive Director, Native Secretariat . . .³⁷

A provincial government official has further disclosed very recently that the Canada-Alberta-IAA tripartite committee is now "defunct," and that the government of Alberta now only wishes to have "bi-lateral negotiations" on Indian land entitlement with the government of Canada.³⁸ In other words, the Indian claimants must negotiate directly with the federal government and if these negotiations are successful, then the

government of Canada alone must negotiate with Alberta to get the necessary land under the Natural Resources Transfer Agreement. In terms of our concerns with the overall relationships between the respective governments and the Indian representatives, it appears that the Alberta-IAA, Indian band relationship has hit a new low. On the Indian side, Indian leaders have similarly disclosed grave suspicions of the Alberta government and a desire to deal mainly with the federal government.³⁹ It remains to be seen if Joe Dior, the newly elected IAA President, will have a different attitude to the provincial government.

The unilateral aspect of Alberta policy-making is clear from both the policy-making process and the content of the eventual policy decision. Apparently the committee of officials recommended that the treaty land entitlement be based on the band population at the treaty signing, but that mines and minerals be included in the transfer from unoccupied Crown land to reserve land status.⁴⁰ However, the Cabinet Committee agreed with the first recommendation, but not the second. Therefore, the eventual statement of Alberta policy forwarded to the federal government read as follows:

The Government of Alberta is prepared, upon request, to accommodate the transfer of the administration and control of unoccupied Crown lands to the Government of Canada for the fulfillment of obligations under the relevant treaties. These land entitlements will be calculated on the basis of the Band Population as counted at the time of Treaty signing times 128 acres per band member as provided in the Treaty. In such a transfer, all rights to mines and minerals would be retained by the Province of Alberta.⁴¹

(The above quoted letter has been included in Appendix 11.) This new position of the Alberta government contrasted with previous policy decisions of both the Alberta and Canadian governments, in that band population totals were normally calculated at the time the reserves were surveyed, and mines and minerals were included with the reserve land transfers.⁴²

Secondly, this new Alberta land claims policy position appears to be indicative of an evolving Alberta position vis-a-vis treaty Indians generally--namely, there should be no special status or in other words, Indians should be treated the same as all other Alberta citizens. We have already noted in chapter five that the Alberta government was unwilling to accord treaty Indians any special treatment at the Syncrude project. According to a provincial government source the underlying reason or assumption behind this new Alberta land entitlement position was that treaty Indians should be accorded no more privileges than other Albertans when it comes to land.⁴³ If private citizens are not allowed to retain mineral rights when they purchase land,--"why should Indian bands be given this right?" reasoned various Alberta Cabinet ministers.⁴⁴ This hard-line Alberta position, i.e., no special status is qualified somewhat, in that Alberta is willing to go along with clear legal obligations such as those embodied in the Natural Resources Transfer Agreement for Alberta. Clauses 10, 11, 12 of this agreement accord special rights to treaty Indians especially regarding

Indian reserves and Indian hunting, fishing and trapping for food. This evolving Alberta position will be an extremely tough pill for treaty Indians to swallow, in that it is very close to the position taken by the government of Canada in their 1969 White Paper. For many Albertans and Canadians this--no special status for Indians, everyone should be treated equally--has a definite appeal and logic, but it neither adequately takes into account the spirit of the historic agreements with the Indian people nor the present socio-economic disadvantaged position of Indian bands. The decision of Alberta Cabinet ministers to take a course of action based on the no special status assumptions is, therefore, not so surprising in that this same position is held by many citizens and indeed was the position of the Canadian government in 1969-70. However, if we can learn anything from the experiences of the federal government in recent times it is that this policy was found to be "unworkable" and new accommodations for an Indian special status were developed in the already noted "Approach to Government-Indian Relationship" paper. Of course, in the eyes of many Indian leaders, the government of Canada has not moved nearly far enough in firming up Indian special status by statutory recognition of various aboriginal and treaty rights, but Canada has reversed the direction since the 1969 White Paper and desires ". . . that there would continue to be recognition for Indian status, treaty rights and special privileges

resulting from land claims settlements."⁴⁵

Further evidence of the significant impact of this tough Alberta stance on Indian land claims is illustrated by the concrete experiences of the Ft. Chipewyan Cree Band and the Isolated Communities in the past year. The historical background of negotiations for the Ft. Chipewyan Cree Band claim has been sketched in chapter one. The current negotiations covered a period from 1973 to the present day. In 1973, the Cree Band and the federal government negotiated a land claims settlement whereby it was agreed that the December 31, 1972 population was the relevant one for land entitlement.⁴⁶ This entitlement amounted to 97,280 acres of land. Following an intensive land use and selection process in 1973-74, the band chose two sites, one at Peace Point which had gypsum deposits, and one at Embarass Portage. These sites amounted to 42,000 acres and were both within the Wood Buffalo National Park. Following tripartite and informal negotiations, the provincial government on February 26, 1975 agreed to fully cooperate:

Since the federal government has given its approval, the Government of Alberta is prepared to cooperate fully in implementing the necessary land transfer to allow the establishment of reserves for the Chipewyan Cree at Peace Point and Embarass Portage. The remaining portion [sic] of the land entitlement will be subject to separate negotiations once the Chipewyan Band has completed the necessary studies.

It is my understanding that the Band will be providing the provincial government with the documentation necessary to ensure that Alberta's approval of this land transfer will not prejudice its case in respect of any other land claim made by the Indian people of Alberta.

I have asked my officials to discuss the details of the transfer with the appropriate federal officials and Mr. Robert Young, counsel for the Fort Chipewyan Cree Band.⁴⁷

The "documentation" referred to by the Minister was provided by way of letters from the Chief and the band lawyer, Bob Young to the effect that reserve allocation within Wood Buffalo National Park ". . . had no bearing upon and in no way improves or strengthens the claim of the Band or any other group of Indian people in the Province of Alberta to further lands within the Province of Alberta."⁴⁸ Federal and provincial officials met in the spring of 1975 and agreed to have the reserve surveys completed in the summer of 1975 and this was done. Reciprocal Orders-in-Council were needed and legal officers of the federal and provincial governments had some trouble reaching agreement on the correct legal descriptions. Finally, on December 22, 1976 Warren Allmand wrote to the Alberta Attorney General requesting that the appropriate provincial Order-in-Council be finalized and approved (see Appendix 11). On April 22, 1977, the provincial answer was the new policy statement previously quoted and appended. The effect of this new position on the band's land entitlement was devastating. The new provincial formula for calculating land entitlement meant that they would be entitled only to some 23,808 acres and there would be no chance for band mineral resource rights. Subsequent negotiations between Warren Allmand, the Minister responsible

for Indian Affairs, and Lou Hyndman of the provincial Federal and Intergovernmental Affairs department in late July 1977 have produced no concrete progress and a definite stalemate is in evidence.⁴⁹ While the provincial Cabinet Committee may change its position, the chances appear to be slim, even though provincial Crown land is not involved in the Chipewyan Cree entitlement.⁵⁰ (Under clause 14 of the Natural Resources transfer, if this federal Crown land ceases to be a national park, ownership of this land reverts to the province.) The Cree Band is now considering court action to get their treaty land entitlement.

Alberta took a similar hard-line approach with the Isolated Communities caveat referred to in chapter five. Once it became clear through a Supreme Court decision on the NWT caveat case that Alberta might lose in court, the government moved quickly to pass retroactive legislation through Bill 29.⁵¹ Under Section 141(1) of this bill it was stated that "No caveat may be registered which affects land for which no certificate of title has been issued."⁵² Since the Isolated Communities caveat was related to essentially unpatented Crown land, their court battle was legislated out of existence. One legal option was gone, but such land rights as they had still remained in existence. There was opposition inside and outside the legislature to this Bill 29, but the government remained firm and did not change the legislation.⁵³ This tough Alberta position on the land

claims caveat was particularly difficult for the Isolated Communities, in that many of these native people believed that they had lost their aboriginal rights and consequently became extremely bitter about the actions of the provincial government.⁵⁴ Presently, the Isolated Communities are considering various negotiating and legal options to acquire their land entitlement.

Conclusion

Given the situation of the solid political position of the Progressive Conservative government in Alberta (65 Progressive Conservatives in a 71 seat Legislature), it is hard to believe that they will change their policy position on Indian land claims in the next few years. If Alberta was to elect a stronger opposition in the Legislature, then the government might feel the necessity of developing a more equitable social policy regarding Indian land claims. However, with their rigid lawful obligation stance on Indian land claims, the government of Alberta is more likely to change its policy following a court decision favorable to the Indian position. There are no present indications that negotiations by the federal government or the Indian bands will change Alberta's hard-line position.

In terms of the federal government, things look somewhat more hopeful. The recent Canada-Saskatchewan agreements point to the possibility of a more open, social policy-oriented approach to treaty land entitlement. The federal

position on land surrenders remains stuck on the rigid lawful obligation policy and once again it may take a court decision in favor of the Indians to change the federal position on this issue.⁵⁵ In terms of both land entitlement and land surrender claims policy on a national basis, the Indian Rights Process is in place and there remains more potential for working out new joint policies through that process than through the courts. Whether new national policies of the federal government and the National Indian Brotherhood can be made applicable to Alberta is another matter. Future court decisions or negotiations with Alberta will provide some answers.

The following outline states my conclusions regarding the policy positions of the governments of Alberta and Canada in a more graphic way.

Policy Positions (July, 1977)	<u>Structures of Indian Policy-Making</u> (Positional Policies)	<u>Settlement of Indian Land Claims</u> (Allocative Policies)
Canada	positive (Indian Rights Process)	ambivalent (legal obligation versus new Saskatchewan-Canada agreements)
Alberta	negative (unilateral Alberta policy-making)	negative (hard-line, minimum policy on land entitlement)

The Alberta position is the most clear-cut, being negative on both structures and settlements. The position of the federal government is somewhat difficult to reconcile. The

Indian Rights Process can be viewed as the necessary prior condition to overcoming the present ambivalent policies on land claims settlements. There is thus a time lag between positional and allocative policies with the positional policies coming first. Future historians will tell whether or not Indian representatives and federal government leaders seize this opportunity and realize the potential of this new relationship in Confederation.

FOOTNOTES--CHAPTER 6

¹Statement of the Government of Canada on Indian Policy 1969 (Ottawa, Indian Affairs and Northern Development, 1969), p. 11. Also "Statement Made by Honourable Jean Chretien, Minister of Indian Affairs and Northern Development, on Claims of Indian and Inuit People," Aug. 8, 1973, Ontario, mimeo, p. 1.

²"Statement Made by the Honourable Jean Chretien, Minister of Indian Affairs and Northern Development, on Claims of Indian and Inuit People," Aug. 8, 1973, Ottawa, mimeo. p. 2.

³Lougheed, Alberta Hansard, October 25, 1974, p. 3204.

⁴In the Federal Court of Canada, Trial Division, Raymond Cardinal et al. versus Her Majesty the Queen (T-2330-75). Also the Peigan band initiated in June, 1977 similar legal proceedings.

⁵This point was made by Jean Fournier, Director of the Office of Native Claims in the course of negotiations for the Blood band land entitlement claim in the spring of 1976.

⁶"Native Claims Policy," Dec. 6, 1974, Memorandum to Cabinet, p. 14.

⁷Interview, June 20, 1977, Edmonton (Confidential source).

⁸See for example The Edmonton Journal, May 7, 1977, p. 15.

⁹Interview, June 10, 1977, Ottawa (Confidential source).

¹⁰Speech by Lloyd Barber to the Canadian Managing Editors' Conference, Regina, May 27, 1976.

¹¹Interviews, June 8-13, 1977, Ottawa (Confidential sources). Also Interviews, March 3 and June 20, 1977, Edmonton (Confidential sources).

¹²Interviews, June 9, 10, and 13, Ottawa (Confidential sources).

- ¹³"An Approach to Government-Indian Relationship,"
p. 1.
- ¹⁴Letter to Judd Buchanan to George Manuel, July 22,
1977.
- ¹⁵Letter of Robin Dodson, Acting Regional Director to
P. C. Mackie, ADM-Indian-Eskimo Affairs, November 8, 1976.
Also Minutes of the Department of Indian Affairs and Indian
Association of Alberta Workshop, Dec. 19-22, 1976, Jasper,
Alberta, mimeo.
- ¹⁶Motion NO. 28, NIB General Assembly, Sept. 15-17,
1976, Whitehorse, Yukon.
- ¹⁷Interview with Noel Starblanket, Ottawa, June 14,
1977.
- ¹⁸Ibid.
- ¹⁹Interview, June 8, 1977, Ottawa (Confidential
source).
- ²⁰"Synopsis of National Indian Brotherhood Positions
to the Joint NIB/Cabinet Committee," July 11, 1977, mimeo,
pp. 1-12.
- ²¹"Proposal Submitted to the Joint Cabinet/National
Indian Brotherhood Committee," by the Canadian Indian Rights
Commission, July 11, 1977, p. 8. Also Brian Pratt, the
Prairie Indian Rights Commissioner and others who attended
this Joint Committee Meeting confirmed the approval of the
CIRC proposals.
- ²²Interviews, June and July, 1977 (Confidential
sources).
- ²³"Indian Land Entitlement" and "Indian Land
Surrenders," Position Papers of the Indian Association of
Alberta. These papers have not yet been made public by the
Indian Association of Alberta.
- ²⁴Letter of June 23, 1977 from Warren Allmand to Lou
Hyndman, Minister of Federal and Intergovernmental Affairs,
Alberta.
- ²⁵Interviews, June 10, 13, Ottawa (Confidential
sources), and Interview, May 16, 1977, Calgary (Confidential
source).
- ²⁶Interview, May 16, 1977, Calgary (Confidential
source).

²⁷Ibid.

²⁸Interview, May 16, 1977, Calgary (Confidential source).

²⁹Personal communication of Ahenakew, June, 1976.

³⁰John Richards, "Potash Nationalization: Prairie Fabianism at Work," mimeo, Public Policy Seminar paper, April, 1977, Political Science Department, University of Alberta.

³¹Canada Year Book 1975 (Ottawa, Statistics Canada, 1975), pp. 165 and 170.

³²Ibid.

³³K. J. Rea, The Political Economy of Northern Development (Ottawa, Science Council of Canada, 1976), pp. 89, 102-3 and 118.

³⁴The Saskatchewan Indian, March, 1977, Volume 7, NO. 3, p. 24.

³⁵Interview, June 13, 1977, Ottawa (Confidential source).

³⁶Interview Nov. 3, 1976, Edmonton (Confidential source).

³⁷Letter of June 9, 1977 to Acting IAA President Simon Waquan from Lou Hyndman.

³⁸Interview, Aug. 10, 1977, Edmonton (Confidential source).

³⁹Interview, March 3, Harold Cardinal, and Conversation, June 10, 1977, Simon Waquan.

⁴⁰Interview, June 20, 1977, Edmonton (Confidential source), and Interview, June 10, 1977, Ottawa (Confidential source).

⁴¹Letter of April 27, 1977 from Lou Hyndman to Warren Allmand.

⁴²Letter of June 23, 1977 from Warren Allmand to Lou Hyndman, p. 2 (see Appendix 11). Also Roland Wright, "The Implementation of Treaty Six, 1867-1911: The Entitlement Question," Ottawa, Indian Association of Alberta, unpublished research paper, February 1976, p. 39.



⁴³Interview, June 20 and Aug. 10, 1977, Edmonton (Confidential source).

⁴⁴Ibid.

⁴⁵"An Approach to Government-Indian Relationship," op. cit., p. 1.

⁴⁶Letter of May 31, 1973 from Jean Chretien to Chief Albert Gladue of the Cree Band at Fort Chipewyan.

⁴⁷Letter of Feb. 26, 1975 from Don Getty, Minister of Federal and Intergovernmental Affairs to Harold Cardinal. A similar letter was sent to Judd Buchanan on the same date.

⁴⁸Letter of March 5, 1975 from Cree Band Chief to Don Getty, and letter of February 7, 1975 from R. Young to D. Getty.

⁴⁹Interview, Aug. 10, 1977, Edmonton (Confidential source).

⁵⁰Ibid.

⁵¹Supreme Court of Canada, Chief Francois Paulette vs. Her Majesty the Queen, p. 19. Also Bill 29, The Land Titles Amendment Act, 1977, Alberta.

⁵²Bill 29, op. cit., Section 141(2).

⁵³Hansard, April 4, 1977, pp 623-24; Hansard, April 6, 1977, pp. 672-73; and Hansard, May 6, 1977, pp. 1206-19. Also various public meetings, especially one at Garneau United Church on May 5, 1977. The Alberta Conference of the United Church of Canada and the Alberta Federation of Labor passed resolutions condemning Bill 29.

⁵⁴Interview with William Beaver, President of the Isolated Communities Advisory Board, Edmonton, May 20, 1977.

⁵⁵"Native Claims Policy," Dec. 6, 1974, Memorandum to Cabinet,--especially--"The Supreme Court's judgement in the Nishga case . . . had a heavy influence on the Government's decision in July 1973 to negotiate with native groups on claims concerning land, in areas where Indian title had not been extinguished," p. 6.

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APPENDIX I.

General Delivery
S. Cooking Lake
Alberta T0B 0Y0
May 5, 1977

Mr. Jean Fournier
Director, Office of Native Claims
Department of Indian Affairs and
Northern Development

Dear Mr. Fournier,

Greetings! As you may recall, I participated as one of the N.I.B. representatives on the working group that helped develop the Indian Rights Process.

Presently I am working on an M.A. thesis in political science at the University of Alberta. My thesis is titled "Indian Land Claims: Federal Policy and Alberta Perspectives". (See attached outline for further details.) I have received the permission of the I.A.A. to work on this thesis and to use their research materials, on the understanding that the copyright remains with the Indian Association of Alberta.

I will be coming to Ottawa on June 7 and will have roughly ten days to do research there. If I could interview you sometime during the period of June 8- June 16, I would appreciate it very much. Your comments would be used in my thesis on a "confidential source" basis, if that is your preference.

I look forward to hearing from you at your convenience. Thank you for your cooperation.

Yours truly,

Richard Price

Richard Price

April 1977

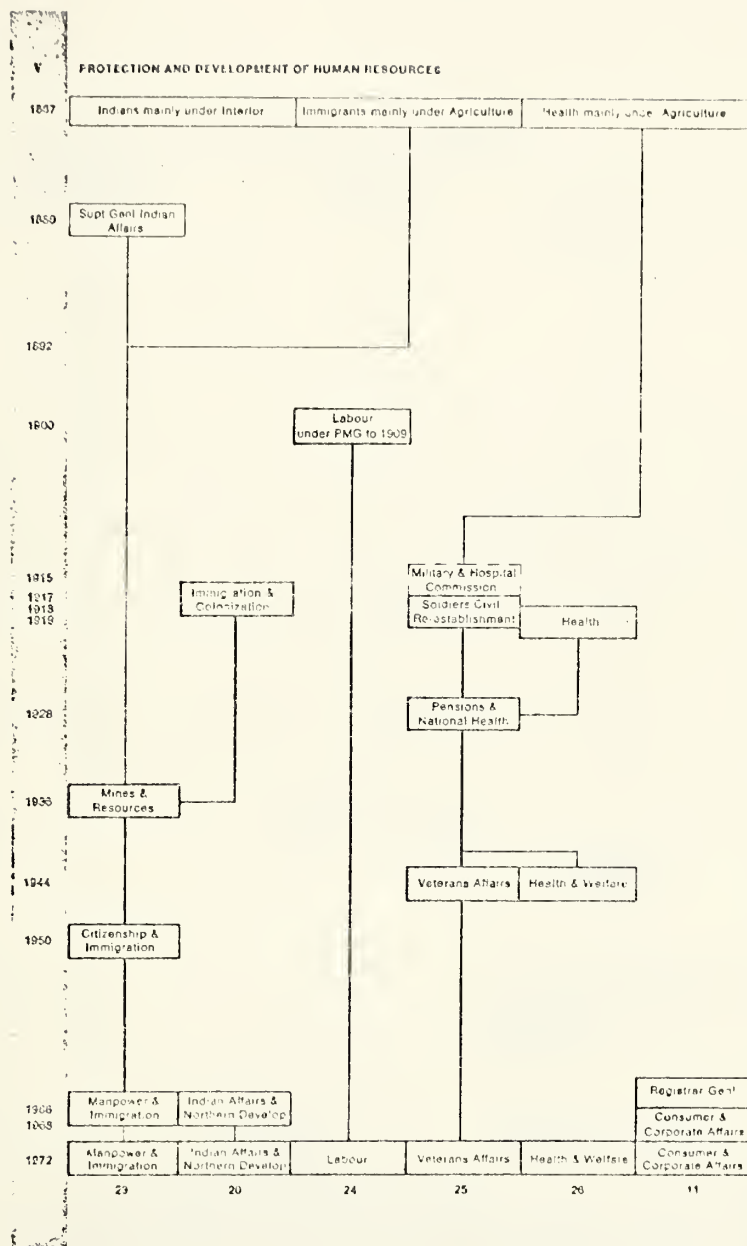
INDIAN LAND CLAIMS - FEDERAL
POLICY AND ALBERTA PERSPECTIVES

Outline

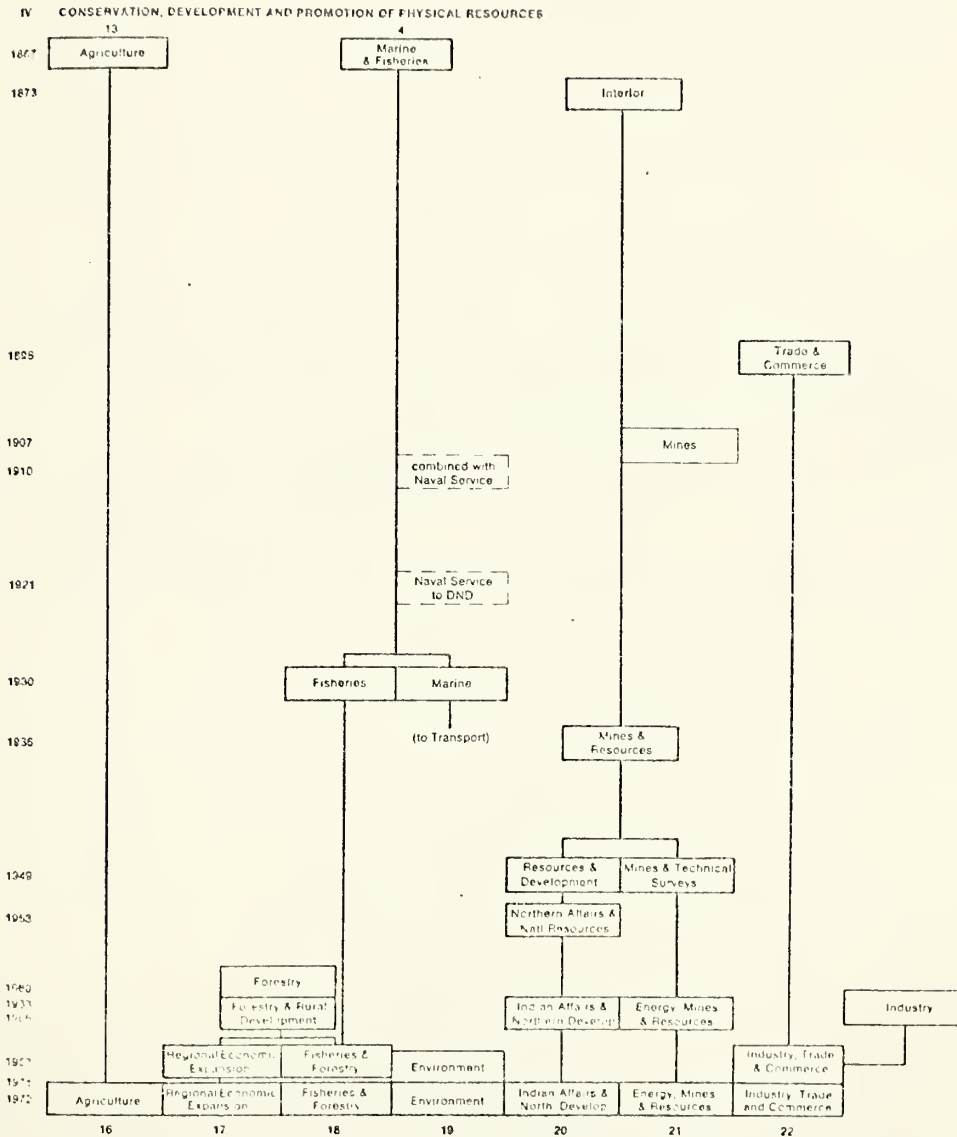
- i. Introduction
- I. Alberta Indian Land Claims- Origins, Categories, and Contemporary Significance
- II. Indian-Government Relations - Politics and Policy-making 1968-76
- III. "Indian Rights Process" 1974-77 - A Mechanism for Indian Rights and Land Claims Settlements
- IV. Federal-Provincial Relations and Indian Land Claims: The Alberta Situation
- V. The Impact of the Indian Association of Alberta on the T.R. Sands Development Policies of Syncrude Canada Ltd. and the Governments of Alberta and Canada
- VI. Prospects for Land Claims Resolution in Alberta - Litigation; Lawful Obligation versus Negotiation; Social Policy?
- VII. Conclusion

APPENDIX 2

APPENDIX 3



Source: J. E. Hodgetts, The Canadian Public Service (Introduction).



Source: J. E. Hodgetts, The Canadian Public Service (Introduction).

APPENDIX 4

A SUMMARY COMPARISON OF THE
GOVERNMENT "WHITE PAPER" AND THE INDIANS "RED PAPER"

YOUR WHITE PAPER :

The legislative and constitutional bases of discrimination should be removed.

There should be a positive recognition of the unique contribution of Indian culture to Canadian life.

Services should come through the same channels and from the same government agencies for all Canadians.

Those who are furthest behind should be helped most.

THE RED PAPER :

The legislative and constitutional bases for Indian status and rights should be maintained until such time as Indian people are prepared and willing to renegotiate them.

These are nice sounding words which are intended to mislead everybody. The only way to maintain our culture is for us to remain as Indians.

Indians have a right of access to the same services as are available to all Canadians plus those additional rights and privileges which were established by the British North America Act and by subsequent treaties and legislation.

These promises are bait to catch us in the trap of the rest of the policy. The Federal Government is trying to divide us Indian people so it can conquer us by saying that the poorer reserves will be helped most. Indian people and the organizations they

support should be given the resources and the responsibility to determine their own priorities and future lines of development.

Lawful obligations should be recognized.

If the Government meant what it said, we would be happy. But it is obvious that the Government has never bothered to learn what the treaties are and has a distorted picture of them. The Government shows that it is wilfully ignorant of the bargains that were made. Lawful obligations, including those concerned with aboriginal rights, unfulfilled promises, and treaty provisions should be recognized.

Control of Indian lands should be transferred to the Indian people.

We agree with this intent but we find that the Government is ignorant of two basic points. The Government wrongly thinks that the Indian Reserve lands are owned by the Crown. These lands are "held" by the Crown but they are Indian lands. The second error the Government commits is making the assumption that Indians can have control of their land only if they take ownership in the way that ordinary property is owned. Control of Indian lands should be maintained by the Indian people, respecting their historical and legal rights as Indians.

The Government would be prepared to...

...Propose to Parliament that the Indian Act be repealed and take such legislative steps as may be necessary to enable Indians to control Indian lands and to acquire title to them.

We reject the proposal that The Indian Act be repealed. It is essential to review it but not before the question of the treaties is settled and there is a consensus with the Indian people respecting their historical and legal rights as Indians.

...make funds available for Indian economic development as an interim measure.

We say it is not realistic to suppose that short-term assistance with economic development as an interim measure will be adequate. The promise of substantial funds must be followed by actually making these monies available for Indian social and cultural, as well as economic development, with the emphasis in each case to be determined by the Indians concerned. The Government should give special consideration to the proposed Alberta Indian Development System, as a possible pattern of Federal-Provincial-Indian co-operation in community development.

THE WHITE PAPER :

...wind up that part of the Department of Indian Affairs and Northern Development which deals with Indian affairs. The residual responsibilities of the Federal Government for the programs in the field of Indian affairs would be transferred to other appropriate federal departments.

...appoint a Royal Commission to consult with the Indians and to study and recommend acceptable procedures for the adjudication of claims.

THE RED PAPER :

We believe the Department of Indian Affairs, in its present archaic and paternalistic form, should be wound up. There should be established instead a smaller federal Indian agency more closely attuned to the needs of Indian people and responsible primarily for ensuring that the Queen's promises with respect to treaties and lands are kept.

We reject the appointment of a sole Commissioner because he has been appointed without consultation and by the Government itself. He is not impartial and he has no power to do anything but a whitewash job. The Government should now, in consultation with the Indians, implement its campaign promise to establish an "independent, unbiased, unprejudiced" Commission and it should have the power to call for any witnesses or documents that it, or the Indians, wish. Its judgments should be binding.

APPENDIX 5



MINISTRE DE LA SANTE ET DU BENEVOLENCE
ET
RESPONSABLE FOR THE STATUS OF WOMEN

MINISTRE DE LA SITUATION DE LA FEMME
ET
RESPONSABLE FOR THE STATUS OF WOMEN

Ottawa K1A 0A3

CONFIDENTIAL

February 9, 1976

Mr. George Manuel
President
National Indian Brotherhood

Dear Mr. Manuel:

In my capacity as Acting Chairman of the Joint Cabinet/National Indian Brotherhood Committee, I am glad to inform you that Cabinet has now reviewed the Joint Committee report dated December 12, 1975.

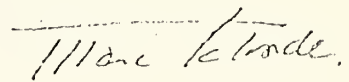
Cabinet has received favourably most of the recommendations put forward with some minor modifications which you will find underlined in the amended report attached hereto. Since these modifications were not really substantial Cabinet has decided not to refer them back to the Joint Committee for further study.

You will note that Cabinet has approved the recommendation concerning the establishment of a Secretariat. However, the location of this Secretariat has not yet been determined.

Should you need any clarification, I would invite you to contact me and I will be glad to provide you with the explanation you feel is needed

May I take this opportunity to thank you sincerely for the good cooperation of all the executive of the National Indian Brotherhood in this very important task that both the Government and the Brotherhood have undertaken.

Yours truly,

A handwritten signature in cursive script, reading "Marc Lalonde".

Marc Lalonde
Acting Chairman
Cabinet/National
Indian Brotherhood
Committee

REPORT OF THE JOINT
CABINET/NATIONAL INDIAN BROTHERHOOD COMMITTEE:

December 12, 1975

AS AMENDED BY CABINET

I- INDIAN RIGHTS PROCESSES

a) Joint Committee

- 1) a Joint Cabinet/National Indian Brotherhood (NIB) Committee be established to provide ministers and Indian leaders with an opportunity to discuss problems and issues of concern to both; the scope of this Joint Committee to be broad and focussed essentially on questions of principle and policy;
- 2) the Joint Committee be composed of the NIB Executive Council and of the following ministers: the President of the Treasury Board, the Minister of Justice, the Minister of Manpower and Immigration, the Solicitor General, the Secretary of State, the Minister of National Health and Welfare, the Minister of State for Urban Affairs, and the Minister of Indian Affairs and Northern Development. Other ministers could be invited to attend meetings of the Joint Committee when items on the agenda relate to the interest of their department;
- 3) the Joint Committee be chaired by a Minister appointed by the Prime Minister after consultation with the NIB;
- 4) Joint Committee members avoid sending representatives to meetings when they are unable to attend;

- 5) public statements concerning the Joint Committee meetings and activities be made only with the agreement of the Joint Committee;
- 6) recommendations from Joint Committee be referred to Cabinet;

b) Joint Working Groups

- 1) joint working groups be established by the Chairman of the Joint Committee and the President of the NIB when needed for the purpose of clarifying issues before they are submitted to the Joint Committee for discussion;
- 2) the agenda for meetings of the Joint Committee be defined at the preceeding meeting so that joint working groups can work effectively;
- 3) joint working groups report to the Joint Committee;

c) Joint Sub-Committee

- 1) the Joint Committee establish a joint sub-committee on Indian rights and claims (Joint Sub-Committee);
- 2) the Joint Sub-Committee address the problem of principles of claims and of settlement processes and any other items that the Joint Committee might wish to refer to it and on which agreement could be reached at the Joint Committee level;
- 3) the Joint Sub-Committee be composed of three NIB Executive Council members and three Cabinet ministers;

- 4) no more than one formal sub-committee be established;

d) Canadian Indian Rights Commission

- 1) a Canadian Indian Rights Commission (Commission) be established under the direction of the Joint Committee for the purpose of facilitating the resolution of issues raised in the Joint Committee process;
- 2) the Joint Committee direct the Commission to work closely with the Joint Sub-Committee on the claims issue;
- 3) a commissioner be appointed in each of the three following regions: the Prairies, Ontario, Quebec and the Maritimes;
- 4) the first group of commissioners be appointed for three, four, and five years; subsequent appointments or re-appointments to be for five years;
- 5) a coordinating commissioner be appointed after his role has been determined by the Joint Sub-Committee;
- 6) the Commission come under the Privy Council Office for administration purposes;

e) Joint Nominating Committee

the Chairman of the Joint Committee and the President of the NIB propose the names of three commissioners to the Joint Committee which, in turn, will recommend their approval to Cabinet;

f) Panel of Inquirers

- 1) a panel of inquirers be established consisting of a list of names of well-known persons who could be asked to conduct an inquiry at the request of the Joint Committee;
- 2) the powers of the Inquirer be further studied by the Joint Sub-Committee in consultation with the present Indian Rights Commissioner, Dr. L. Barber before being recommended to Cabinet;

g) Secretariat

- 1) a secretarial be established;
- 2) the location of the Secretariat to be determined at a later date;
- 3) the Secretariat include one person of Indian ancestry;

h) Federal-Provincial Relations

after the report has been approved by Cabinet, the Minister of Indian Affairs and Northern Development should inform the provinces in writing of the agreement reached by the federal government and the NIB on the Indian Rights Processes;

i) Public Relations Considerations

a joint press release be issued after Cabinet approval of the Indian Rights Processes;

j) Funding

a joint working group on funding be established to give consideration to financial matters beginning with funding

questions currently under consideration, namely; ²⁵⁷

- 1) core funding of Indian associations;
- 2) funding of claims activity; and
- 3) additional funding resulting from the Joint Cabinet/
NIB Coccittee process.

II INDIAN ACT REVISION

a) Indian Act Principles

the Joint Working Group on the Indian Act pursue its study of the proposed principles for amending the Indian Act and submit a report on this issue as soon as possible;

b) Consultation Process

- 1) the proposed process for amending the Indian Act outlined in the Annex I be approved;
- 2) the government be free to receive views from other groups interested in the revision of the Indian Act;
- 3) the interim report on education be referred to the Joint Working Group on the Indian Act for study and recommendation to the Joint Committee;

c) Indian Act Funding

- 1) the government and the NIB allocate resources and arrange their priorities so as to ensure that the process is carried out effectively and expeditiously;

- 2) periodic progress reports on the consultation process be made by the NIB for discussion and consideration by the Joint Working Group prior to each scheduled payment to the NIB;
- 3) the additional funds needed to activate this process be studied by the Joint Working Group on Funding.

AGNEDA FOR THE NEXT MEETING OF THE JOINT COMMITTEE

the agenda for the next meeting of the Joint Committee to be held in the Spring of 1976, be determined by the President of the Joint Committee and the President of the NIB and include among other subject the following:

- a) progress report by the Joint Working Group on the Indian Act on the revised principles and on the proposed amendments to the education section;
- b) report of the Joint Working Group on funding; and
- c) progress report on the implementation of the Indian Rights Processes approved by Cabinet.

February 5, 1976

APPENDIX 6

OTTAWA, Ontario K1A 0H4

30 MAR 1976

The Honourable Peter Lougheed,
Premier,
Legislative Building,
EDMONTON, Alberta.

My dear Premier:

You will be aware that for the past year or so my colleagues and I have been meeting with representatives of the National Indian Brotherhood. It has been agreed that a Joint Cabinet/National Indian Brotherhood Committee should be established to provide the opportunity for Government and Indian leaders to discuss major problems and issues that are of mutual concern. As a result of a meeting on December 12, 1975, Cabinet has now approved the process recommended by the Joint Committee to yield agreements between the Federal Government and representatives of the Indian people on certain policy matters.

The Joint NIB/Cabinet Committee is chaired by a Minister appointed by the Prime Minister, and is composed of the NIB Executive Council and the following Ministers: the President of the Treasury Board, the Minister of Justice, the Minister of Manpower and Immigration, the Solicitor General, the Secretary of State, the Minister of National Health and Welfare, the Minister of State for Urban Affairs and the Minister of Indian Affairs and Northern Development. Other Ministers will be invited to attend meetings of the Joint Committee when items on the agenda relate to the interest of their department.

As it is not expected that the Joint Committee could meet more than twice a year, a Joint Sub-Committee on Indian Rights and Claims has been formed, particularly because of the priority both the Government and Indian leaders place on the early resolution of Indian claims. It is envisaged that this smaller Committee of three Ministers and three Indians leaders would meet more frequently, as necessary, to address the problem of principles of claims and of settlement processes, and any other matters that the Joint Committee may wish to refer to it. It is not expected that the Joint Committee will deal with those claims which are based on non-extinguishment of aboriginal title since the Government's established policy of negotiation towards agreed settlement is making progress in the areas concerned - British Columbia, the Yukon and Northwest Territories.

The Joint Sub-Committee on Indian Rights and Claims will be supported by a Canadian Indian Rights Commission which will also be available to facilitate the resolution of other issues raised in the Joint Committee process under the direction of the Joint Committee. A commissioner will be appointed for each of the following three regions: the Prairies, Ontario, Quebec and the Maritimes. The first group of commissioners will be appointed for three, four and five years, with subsequent appointments or re-appointments to be for five years.

To provide additional assistance to the Joint Committee, if required, a panel of inquirers will be established consisting of a list of names of well-known persons who could be asked to conduct an inquiry at the request of the Joint Committee.

Also at the December meeting of the Joint Committee, agreement was reached on a consultation process to be carried out by the National Indian Brotherhood among Indian bands about revisions to the Indian Act. It is anticipated that this consultation process will take about two years to enable all bands to have the opportunity to express their views about proposed amendments to the Act. You will be kept informed about these proposals as they arise in the Joint Committee.

The Joint Committee process is a new initiative in a positive direction, which I am confident can lead to an improved relationship between the Government and Indian people. Because of your own interest in such improvements, I know you will be interested in these recent developments which inevitably affect provincial governments and the Canadian people at large. For this reason, I am sending a similar letter to all provincial premiers, as well as the Commissioners of the Yukon and Northwest Territories. If you wish to have any further information about this process, I shall be very pleased to hear from you.

Yours sincerely,

ORIGINAL SIGNED BY
HON. Judd Buchanan
ORIGINAL SIGNED PAR

Judd Buchanan.

APPENDIX 7

Ordered to be printed by the Minister of the Privy Council
of the Privy Council, approved by His Excellency the Governor
General on the 17 March, 1977

WHEREAS the Committee of the Privy Council have had before them a report representing:

That a Joint Committee consisting of members of the Privy Council and representatives of the National Indian Brotherhood has been established to provide to Ministers of the Crown and Indian leaders an opportunity to discuss problems of concern to the Government of Canada and the status Indians of Canada; and

That a Joint Sub-Committee on Indian Rights and Claims, consisting of three members of the Privy Council and three representatives of the National Indian Brotherhood, has been established since the Government of Canada and the status Indians of Canada are concerned that agreement be reached on basic principles and processes for settling grievances about Indian rights and claims.

THEREFORE, the Committee of the Privy Council, on the recommendation of the Prime Minister, advise that:

- (1) The Honourable Mr. Justice E. Patrick Hartt, a judge of the Supreme Court of Ontario, of Toronto, Ontario, and

Mr. Brian George Pratt, Executive Director, Indian Claims Commission, of Saskatoon, Saskatchewan

be appointed to a Commission to be known as the Canadian Indian Rights Commission, to exercise the following duties:

- (a) to facilitate the development of an inventory and classification of existing claims of status Indians and to report thereon to the Joint Committee; and

- 2 -

(b), where directed by the Joint Committee, to assist in the resolution of issues of concern to the Government of Canada and the status Indians of Canada.

(2) The appointment of Mr. Justice Hartt to the Commission be for a period of five years.

(3) The appointment of Mr. Brian George Pratt to the Commission be for a period of four years.

(4) The Commission be authorized to secure the assistance of such officers and employees of the Government of Canada as may be required for its activities.

(5) The Commission be authorized subject to the direction of the Joint Committee to engage the services of such counsel, staff, clerks and advisers as may be required at rates of remuneration and reimbursement to be approved by the Treasury Board.

(6) The appointment of the Commissioner appointed by Order in Council P.C. 1969-2405 of 19th December, 1969 be terminated as of the day of this Order.

(7) In the case of any person who was engaged in the provision of services to the Commissioner appointed pursuant to Order in Council P.C. 1969-2405 of 19th December, 1969 on the day immediately preceding the day of this Order by virtue of a contract of service between that person and the said Commissioner, the Commission appointed pursuant to this Order shall, if so notified in writing by that person of his intention to fulfil his duties on behalf of the Commission appointed pursuant to this Order, assume the obligations and provide the benefits of the contract as if that contract of service had been entered into by the Commission appointed pursuant to this Order.

Certified to be a true copy of a minute of a meeting of the Committee

of the Privy Council, approved by His Excellency the Governor
General on the 17 March, 1977

PRIVY COUNCIL

WHEREAS the Committee of the Privy Council have
had before them a report representing:

That a Joint Committee consisting of members of
the Privy Council and representatives of the
National Indian Brotherhood has been established
to provide to Ministers of the Crown and Indian
leaders an opportunity to discuss problems of
concern to the Government of Canada and the
status of Canada;

That a Joint Sub-Committee on Indian rights and
claims, consisting of three members of the
Privy Council and three representatives of the
National Indian Brotherhood, has been established
since the Government of Canada and the status
Indians of Canada are concerned that agreement
be reached on basic principles and processes for
settling grievances about Indian rights and
claims;

That it may be desirable to establish procedures
for the purpose of better obtaining and
preserving information concerning past events
related to such grievances of status Indians;

That in obtaining such information it may be
desirable to question elderly Indians with
knowledge of the events giving rise to the said
grievances in order that a record of such
information may be preserved; and

That while both the Government of Canada and
the National Indian Brotherhood recognize that
such information may be useful in negotiating
the settlement of grievances, the position of
the Government of Canada is that such information
may not be admissible in whole or in part in
subsequent legal proceedings and the use of the
procedures herein provided shall be without
prejudice to the right of any party to such
proceedings to contest the admissibility of such
information.

That it is advisable now to appoint a Commissioner under the Inquiries Act who may, when a grievance as described above has been referred to him by a member of the Joint Sub-Committee, obtain information from elderly Indians with respect thereto.

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister, advise that Dr. Lloyd Barber, President of the University of Saskatchewan in Regina, Saskatchewan, be appointed a Commissioner under Part I of the Inquiries Act to obtain information from elderly Indians with knowledge of the events giving rise to the said grievance where a member of the Joint Sub-Committee has referred such grievance to the Commissioner for the purpose of obtaining information and he has decided such action is appropriate.

The Committee further advise that:

- (1) the Commissioner be authorized to exercise all the powers conferred on him by section 11 of the Inquiries Act;
- (2) the Commissioner be authorized to adopt such procedures and methods and to make such rules as he deems expedient for the proper conduct of his Inquiry and to sit at such times and places as he may decide;
- (3) the Commissioner be authorized subject to the direction of the Joint Committee to engage the services of such counsel, staff and clerks as he may require at rates of remuneration approved by the Treasury Board and to secure the assistance of such officers and employees of the Government of Canada as may be required for his activities;
- (4) the Commissioner file with the Secretariat of the Joint Committee his papers and records as soon as possible after the conclusion of each Inquiry and that the Joint Committee be empowered to furnish copies of such papers and records to such persons and on such terms as the Joint Committee sees fit;
- (5) The Commissioner shall also file with the Dominion Archivist one copy of his papers and records as soon as possible after the conclusion of each Inquiry.

APPENDIX 8

B E T W E E N:

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HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indian
Affairs and Northern Development,
(hereinafter called "the Department"),

OF THE FIRST PART,

- and -

SYNCRUDE CANADA LTD., a body corporate
having its head office in the City of
Edmonton, in the Province of Alberta,
(hereinafter called "Syncrude"),

OF THE SECOND PART,

- and -

THE INDIAN ASSOCIATION OF ALBERTA, a
Society having its head office in the
City of Edmonton, in the Province of
Alberta,
(hereinafter called "the Association"),

OF THE THIRD PART.

WHEREAS Syncrude is presently constructing a plant near Fort McMurray, Alberta, for the extraction of synthetic crude oil from bituminous tar sands and Syncrude anticipates that the said plant will commence operation in 1978; and

WHEREAS the Department supports the terms and conditions contained in this Agreement respecting employment of Indians and the maximization of opportunity of Indian Business; and

WHEREAS Syncrude desires a stable work force for the operation of its plant and sound local business in northeastern Alberta and believes that both these objectives can be furthered by employing Indians and by encouraging the development of Indian Business in such area; and

WHEREAS the Association desires to participate in this Agreement

NOTE: All emphasis mine.

and desires the participation of the Department in this Agreement for the benefit of the Association and its members, the Indians of Alberta; and

WHEREAS the Department wishes to provide the financial assistance set out in Attachment "A" to this Agreement without impairing its existing or proposed funding of any of the Department's other programs in Alberta.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

ARTICLE 1

1.1 "Corporation" - means the corporation established in accordance with Attachment "A" to this Agreement.

1.2 "Development Phase" - means the period commencing on the Effective Date and terminating on the commencement of the Operating Phase.

1.3 "Effective Date" - means the 3rd day of July, A.D. 1976.

1.4 "Indian" - means an Indian, as defined in The Indian Act, R.S.C. 1970, Chapter 1-6, as amended, who is a resident of the Province of Alberta.

1.5 "Indian Business" - means a business organization which is Fifty Per Cent (50%) or more beneficially owned by Indians or Indian Bands.

1.6 "Indian Band" - means a Band, as defined in The Indian Act, R.S.C. 1970, Chapter 1-6, as amended, all of whose members are resident in the Province of Alberta.

1.7 "Institution" - means any of Keyano College in Fort McMurray, Alberta, the Lac la Biche campus of the Alberta Vocational College, the Grouard College Campus of the Alberta Vocational College, Grouard, Alberta, and if the student chooses, the Southern and Northern Institutes of Technology, the universities, high schools, colleges or any like institution chosen by Indian people for vocational or secondary education in the Province of Alberta.

1.8 "Manpower" - means the Department of Manpower and Immigration, Government of Canada.

1.9 "Minister" - means the Minister of Indian Affairs and Northern Development, Government of Canada, unless the context otherwise requires.

1.10 "Operating Phase" - means the period commencing on the date on which Syncrude commences start-up operations at the plant.

1.11 "Plant" - means the facility operated by Syncrude at or near Mildred Lake, Alberta, for the purposes of mining, extracting, and upgrading of bitumen to produce synthetic crude oil.

ARTICLE 2

2.1 Consistent with good management practices, Syncrude shall, during the Development Phase and the Operating Phase, recruit and offer employment to Indians who hold the necessary educational and technical qualifications and meet Syncrude's normal standards of employment for available:

- (a) managerial, technical, and professional positions in Syncrude's operations wherever carried on;
- (b) fully-skilled operating, maintenance, and technical positions;
- (c) trainee positions involving on-the-job training leading to permanent employee status (hereinafter referred to as "Trainee Positions").

2.2 Syncrude shall, consistent with good management practices, during the Development Phase and Operating Phase, recruit for future Trainee Positions, Indians who meet Syncrude's normal standards of employment but do not hold the necessary educational and technical qualifications. Such Indians shall be

required, as a condition of any offer of employment, to successfully complete a course of training specified by Syncrude in a letter of "intent to hire" issued by Syncrude to such Indians. Indians selected for educational upgrading pursuant to this Article shall have a minimum educational qualification of Grade Seven standing, or its equivalent in the view of an Institution.

2.3 Syncrude shall undertake one pilot training program for that number of Indians which Syncrude, in its opinion, can reasonably train, who have extensive work experience in areas needed by Syncrude and who meet Syncrude's normal standards of employment, except that they do not hold the educational qualifications required for offers of employment pursuant to Article 2.1. This special training shall include educational upgrading as needed for the job, as well as technical training necessary to meet job progression standards. Selected hires can enter this pilot program only during the year following the Effective Date of this Agreement. The cost of such training program shall be shared by the Department and/or Manpower and Syncrude.

If, on completion of the pilot training program, Syncrude is of the opinion that the pilot training program has been successful in producing skilled technical employees capable of meeting Syncrude's job progression standards, Syncrude may consider the continuation of the pilot training program.

2.4 Syncrude shall require the same performance from and provide the same benefits and privileges to Indian employees as required of and afforded to non-Indian employees which include the following: housing assistance, relocation costs, and transportation.

2.5 Syncrude will acquaint its subcontractors with its Indian hiring program.

2.6 Syncrude will review the job performance of each Indian employee and inform him of his strengths and weaknesses in his job function. All reasonable measures will be taken to assist the employee in his career progression.

2.7 Syncrude shall investigate complaints of discrimination toward Indian employees and shall take appropriate action consistent with good management practices.

2.8 Syncrude's normal on-the-job training will provide Indian employees with the opportunity for technical upgrading to enable such employees to qualify for positions up to and including the fully-trained level of the job category in which they are employed.

ARTICLE 3

3.1 The Association, the Department, and Syncrude shall use, and the Department shall request Manpower (including through the Native Outreach Program) to use every opportunity to directly publicize the employment opportunities with Syncrude pursuant to this Agreement to Indians throughout Alberta. Manpower (including through the Native Outreach Program) and Syncrude shall use all reasonable efforts to recruit candidates acceptable to Syncrude for positions with Syncrude by direct contact with Indian people and through the existing Indian Band administrations and Indian Band councils. Manpower's involvement shall be through its existing programs and shall be conducted in accordance with regulations and policies current at the time of such a project or projects.

ARTICLE 4

4.1 Training of those Indians to whom a letter of "intent to hire" has been given by Syncrude pursuant to Article 2.2 shall be paid for by the Department and Manpower and conducted by Institutions.

4.2

Such training shall be conducted in accordance with the following:

- (a) all such Institutions shall design programs satisfactory to Manpower and which will meet the employment requirements of Syncrude while recognizing and providing for the special cultural and social identity of the Indian students in pre-employment and employment training at such Institutions;
- (b) training costs and living allowances of the Indian students shall be borne by Manpower for the period commencing on the starting date of training for any such student and ending on the first anniversary of such date or at such time as the student leaves the program, whichever is the earlier date. The Department shall bear any costs in respect of longer attendance by any Indian students and in respect to students or programs which for any reason Manpower can not undertake when the required training is to take place;
- (c) Manpower's normal program criteria shall apply in the selection and sponsorship of candidates to be supported by Manpower; and such support shall be subject to the terms and conditions of the Adult Occupational Training Agreement, Canada-Alberta Industrial Training Plan Agreement or the successors thereto which are in effect at the time the required training is to take place;
- (d) The Department and the Association shall evaluate and assess the individual and collective level of success of Indian students in training pursuant to this Agreement, and if:

- (i) the dropout rate of Indian students in any Institution exceeds Twenty-five Per Cent (25%)
(a dropout shall not include a person who leaves the training program to enter another training program or accepts employment with another employer other than Syncrude during the course of his training),
or
- (ii) in the opinion of the Association and the Department the training programs are failing to meet the objectives stated in Paragraph 4.2 (a) hereof,

then

- A. the Association and the Department shall work with and assist Indian students to make necessary adjustments to remain in the training program or change to another training program at another Institution, or
- B. the Department, upon the request of the Association, shall immediately provide funds for alternative training programs to replace programs which have failed such that trained and capable Indian employees may be available when required for employment by Syncrude.

ARTICLE 5

5.1 Syncrude shall provide counselling services, including information and guidance, to Indian employees and Indians holding letters of "intent

to hire" and to their spouses and children in respect of living conditions, life skills and social and cultural adjustments and such Indians' training, job orientation, and working conditions.

5.2 The Department shall provide life skills, social and cultural adjustment training for students holding letters of "intent to hire". The Department and Manpower shall pay the cost for such training of those students they sponsor.

5.3 Syncrude shall require all supervisory and managerial personnel to attend orientation classes provided by Syncrude, for the purpose of familiarizing such persons with the cultural and social identity of Indians.

ARTICLE 6

6.1 The parties shall meet on a quarterly basis during the term hereof to discuss adequacies and deficiencies in the implementation of this Agreement and the possibilities for improvement of such implementation. Each of the parties shall report at such meetings as to its compliance with its obligations under this Agreement, which report shall include information as to its programs and activities for the past quarter relating to:

- (a) publicizing of employment opportunities with Syncrude for Indians;
- (b) recruitment by Syncrude of Indian employees;
- (c) educational upgrading of Indians;
- (d) job progressions of Indian employees;
- (e) life skills training and family adjustment of Indians;
- (f) on-the-job training of Indian employees;

- (g) terminations of employment of Indians; and
- (h) awards of contracts to Indian Businesses.

Syncrude shall include in its report a forecast of its labour requirements for the next ensuing quarter.

6.2 At such meetings any of the parties may discuss, review, enquire into, comment upon, and make recommendations to other parties concerning matters outlined in Article 6.1 (a) to (h) inclusive, and suggest improvements to the other parties.

6.3 Any such recommendations and/or improvements shall be seriously considered by the other parties and provided same are reasonable within the terms of this Agreement and consistent with good management practice, shall be implemented insofar as is reasonably possible.

6.4 The parties may from time to time during the term of this Agreement consult with respect to matters of mutual interest regarding the provisions of this Agreement.

ARTICLE 7

7.1 Syncrude shall provide to the Corporation information respecting Syncrude's long-term needs for suppliers of goods and services.

ARTICLE 8

8.1 Syncrude shall advise the Corporation of all calls or requests for tender which it proposes for contracts to supply goods and services to Syncrude which Syncrude reasonably believes that an Indian Business can perform.

8.2 If the Corporation believes that an Indian Business can perform a contract to supply goods or services to Syncrude, the Corporation shall either:

(a) make existing Indian Businesses aware of such contract
and encourage and assist them to tender or bid for same;
or

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(b) encourage and assist the development of an Indian
Business to tender or bid for such contract.

8.3 Syncrude shall evaluate the tender or bid of any Indian Business
for any contract to supply goods or services to Syncrude on the same basis as
any other tenders or bids received by it. Syncrude shall not discriminate
against Indian Businesses in the awarding of contracts.

ARTICLE 9

9.1 Nothing in this Agreement shall be interpreted as limiting the
right of Syncrude to carry on its business in accordance with good management
practices and all applicable laws.

ARTICLE 10

10.1 The parties shall do all such further acts and things as shall
be reasonably necessary to carry out the terms and provisions of this Agreement.
The parties agree that this Agreement fulfills the commitment of each of the
parties with respect to the matters covered by this Agreement.

10.2 The Association has been represented as acting for and on behalf
of all Indians in Alberta, which representation Syncrude has acted upon in
entering into this Agreement. Accordingly, the Department and the Association
agree that they shall not require Syncrude to deal with or entertain represen-
tations from nor negotiate nor conclude similar agreements with any Indians
or Indian Bands.

ARTICLE 11

11.1 If any dispute arises between the parties concerning the interpretation of any provision of this Agreement, such dispute shall be referred to a single arbitrator appointed by the Chief Justice of the Trial Division of the Supreme Court of Alberta upon the application of any of the parties to the dispute and the decision of the arbitrator so appointed shall be final and binding upon the parties. The arbitrator and the arbitration procedures shall be governed by The Arbitration Act, R.S.A. 1970, Chapter 21.

ARTICLE 12

12.1 All notices and communications hereunder shall be in writing and in lieu of personal service may be given or made by prepaid telegram or other form of telecommunication or by registered mail in a sealed and properly addressed envelope with postage prepaid addressed to the parties at the addresses listed below. Notices or communications so sent shall be deemed to have been received Twelve (12) hours after the sending thereof in the case of a telegram or other form of telecommunication, and Forty-eight (48) hours after the date of mailing in the case of mailing, in either case excluding Saturdays, Sundays, and statutory holidays. The addresses for the parties hereto, until changed by a party hereto by notice to the other parties pursuant to this Article shall be:

(a) | Department of Indian Affairs and Northern Development
| Centennial Tower
| 400 Laurier Avenue West
| Ottawa, Ontario
| K1A 0H4

or

27th Floor, CN Tower
10004 - 104 Avenue
Edmonton, Alberta
T5J 0K1

- (b) | Syncrude Canada Ltd.
| 9915 - 108 Street
| Edmonton, Alberta
| T5K 2G8
- (c) | Indian Association of Alberta
| Room 203, Kingsway Court
| 11710 Kingsway Avenue
| Edmonton, Alberta
| T5G 0X5

ARTICLE 13

13.1 The terms and conditions of this Agreement shall be binding upon and shall enure to the benefit of the parties hereto, their respective subsidiaries, successors or assigns.

13.2 This Agreement shall commence on the Effective Date and shall continue for a period of Ten (10) years thereafter, unless otherwise agreed to by all the parties.

ARTICLE 14

14.1 No member of the House of Commons may be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

ARTICLE 15

15.1 The terms of this Agreement set forth and constitute the entire agreement between the parties with respect to the matters dealt with by this Agreement and no implied covenant or implied liability of any kind which is not expressly stated is created or shall arise by reason of anything contained in this Agreement.

15.2 In the event that Syncrude enters into a collective agreement with a union or joint council representative of all or any of the employees of Syncrude and that collective agreement contains terms and conditions which

conflict with the terms and conditions of this Agreement, then Syncrude's obligations to perform the terms and conditions of the collective agreement shall prevail and Syncrude shall be relieved of its obligations to perform the conflicting terms and conditions of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED SEALED AND DELIVERED)	HER MAJESTY THE QUEEN IN RIGHT OF
)	CANADA as represented by the Minister
)	of Indian Affairs and Northern
)	Development
)	

THIS IS ATTACHMENT "A" TO AGREEMENT BETWEEN HER MAJESTY THE QUEEN
in right of Canada, THE INDIAN ASSOCIATION OF ALBERTA, and SYNCRUDE
CANADA LTD.

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dated this day of A.D. 1976.

ARTICLE 1.1

In order to facilitate the development of Indian enterprises and businesses serving the oil sands area, the Minister in consultation with the Association shall cause to be incorporated Indian Oil Sands Economic Development Corporation (herein called the "Corporation") at the expense of the Department.

ARTICLE 1.2

The Minister shall provide funds by way of grant to the Corporation as follows:

Three Hundred Thousand (\$300,000.00) Dollars on the date the Corporation informs the Minister they are ready to receive the said funds and Three Hundred Thousand (\$300,000.00) Dollars on each anniversary of such date thereafter for four consecutive years.

ARTICLE 1.3

The Minister shall consider requests for additional grants to the Corporation if he is satisfied as to the success of the Corporation and such funds are essential to further the successful work of the Corporation.

ARTICLE 1.4

The Department shall also provide, for five years, free of charge to the Corporation, the services of a senior official of the Economic Development Section of the Department as an advisor to the Corporation and/or Indian businessmen.

ARTICLE 1.5

The operations of the Corporation shall be governed by a Board of Directors composed as follows:

- One (1) Indian representative for a term of Two (2) years;
- One (1) Indian representative for a term of Three (3) years;
- One (1) Indian representative for a term of Four (4) years;
- One (1) Indian representative for a term of Five (5) years;
- One (1) representative of the Government for a term of Four (4) years;
- One (1) representative of private business for a term

- of three (3) years; and
- One (1) representative from private business for a term of Five (5) years.

The members of the Board shall be selected by a screening committee composed of Two (2) representatives of the Association and Two (2) representatives of the Minister, (hereinafter called the "selection committee"). The selection committee shall seek out and select candidates who possess business competence, knowledge of the oil sands area and the economic opportunities therein, and understanding and appreciation of the unique cultural and social identity of Indians. If a director resigns or at the end of the term of each director, the selection committee shall appoint a successor all of whom shall hold office for terms of Five (5) years. Any retiring director is eligible for reappointment.

ARTICLE 1.6

The objects of the Corporation shall include:

- i) to identify, enumerate, evaluate, and characterize the economic development opportunities which are now available or will be available in the oil sands area whether directly as a result of Syncrude's operation or indirectly by any means;
- ii) to identify, enumerate, evaluate and characterize Indian businesses and the seeking out and development of Indians to form businesses which may be enabled to participate in any of the said opportunities;
- iii) the Corporation shall communicate with, assist, and encourage existing Indian businesses and assist, train, and encourage Indians to form viable businesses so that both may meet opportunities identified by the Corporation's activities pursuant to paragraph 1.5 (i); and, in so doing, the Corporation shall provide pre-feasibility assessment and analysis; proposal preparation; economic, marketing, production, employee relations, and financial advice (including use of the Indian Economic Development Fund); coordinate the provision of legal and other professional services; and provide ongoing operational monitoring and assistance.

ARTICLE 1.7

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The company shall be incorporated as an Alberta non-profit Corporation. Its shares shall be held in trust for the Indians of Alberta by the Indian Association of Alberta, and voted so as to realize the aims and objectives of this agreement. This arrangement may be amended by mutual agreement between the Indian Association of Alberta and the Department.

ARTICLE 2.1

In order to further encourage and assist Indian businesses, the Minister in agreement with the Association shall cause a Foundation or a Trust to be incorporated as described in this Article (in this agreement called the "Foundation") at the expense of the Department.

ARTICLE 2.2

The Minister shall provide funds by way of grants to the Foundation as follows:

- a. Five Hundred Thousand (\$500,000.00) Dollars on the date the Foundation informs the Minister they are ready to receive the said funds and Five Hundred Thousand (\$500,000.00) Dollars on the second anniversary date of such notification.
- b. One Hundred Thousand (\$100,000.00) Dollars on the date described in 2.2 (a) and One Hundred Thousand (\$100,000.00) Dollars on each anniversary date thereafter for four consecutive years to cover administration of the Foundation.

ARTICLE 2.3

The Minister shall consider requests for additional grants to the Foundation if he is satisfied as to the success of the Foundation and such funds are essential to further the successful work of the Foundation.

ARTICLE 2.4

The operations of the Foundation shall be governed by a Board of Directors composed as follows:

- One (1) Indian representative for a term of Three (3) years;
- One (1) Indian representative for a term of Four (4) years;
- One (1) Indian representative for a term of Five (5) years;
- One (1) representative from government for a term of Four (4) years;
- One (1) representative from private business for a term of Five (5) years.

The members of the board shall be selected by the selection committee and such members shall have the same qualifications as a Board Member of the Corporation is required to have. An individual may not sit on both the Board of Directors of the Corporation and of the Foundation. Upon the resignation or expiration of the term of a director, the selection committee shall appoint a successor, all of whom shall hold office for terms of five (5) years. Any retiring director is eligible for reappointment.

ARTICLE 2.5

The objects of the Foundation shall be to provide funds by way of grant, to Indian businesses which require equity funding in order to enable them to take advantage of monies available for their operations from other sources of financing and such other objects as are ancillary thereto.

Indian businessmen who receive contracts or develop business opportunities through the assistance of the Corporation and who obtain debt financing through traditional lending agencies, shall automatically receive equity capital from the Foundation, subject to the Indian businessmen's equity needs and the conditions established by the Foundation for such grants.

ARTICLE 2.6

The Foundation shall as soon as possible be structured and shares held as required in order to qualify for and maintain the Income Taxation status for donations and in order to meet the aims and objectives of this agreement.

ARTICLE 2.7

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The Minister shall do all acts and things (including carrying on negotiations with the Minister of National Revenue, bearing the cost of so designing the foundation) for the purpose of securing the deductible status for income tax purposes of donations to the Foundation at least equivalent to the status of donations to charities or a governmental body.

ARTICLE 2.8

No amendment to the memorandum of association or articles of association or any of the incorporating documents of either the Corporation or the Foundation shall be made without the agreement of both the Association and the Minister.

ARTICLE 2.9

The Department of Indian Affairs & Northern Development will provide the Indian Association of Alberta up to Twenty Thousand (\$20,000.00) Dollars per year or such other amount as is mutually agreed upon to cover its expenses associated with this agreement, including the enforcement of the agreement and also the agreement signed by Syncrude Canada Ltd., the Indian Association of Alberta, and the Department of Indian Affairs & Northern Development.

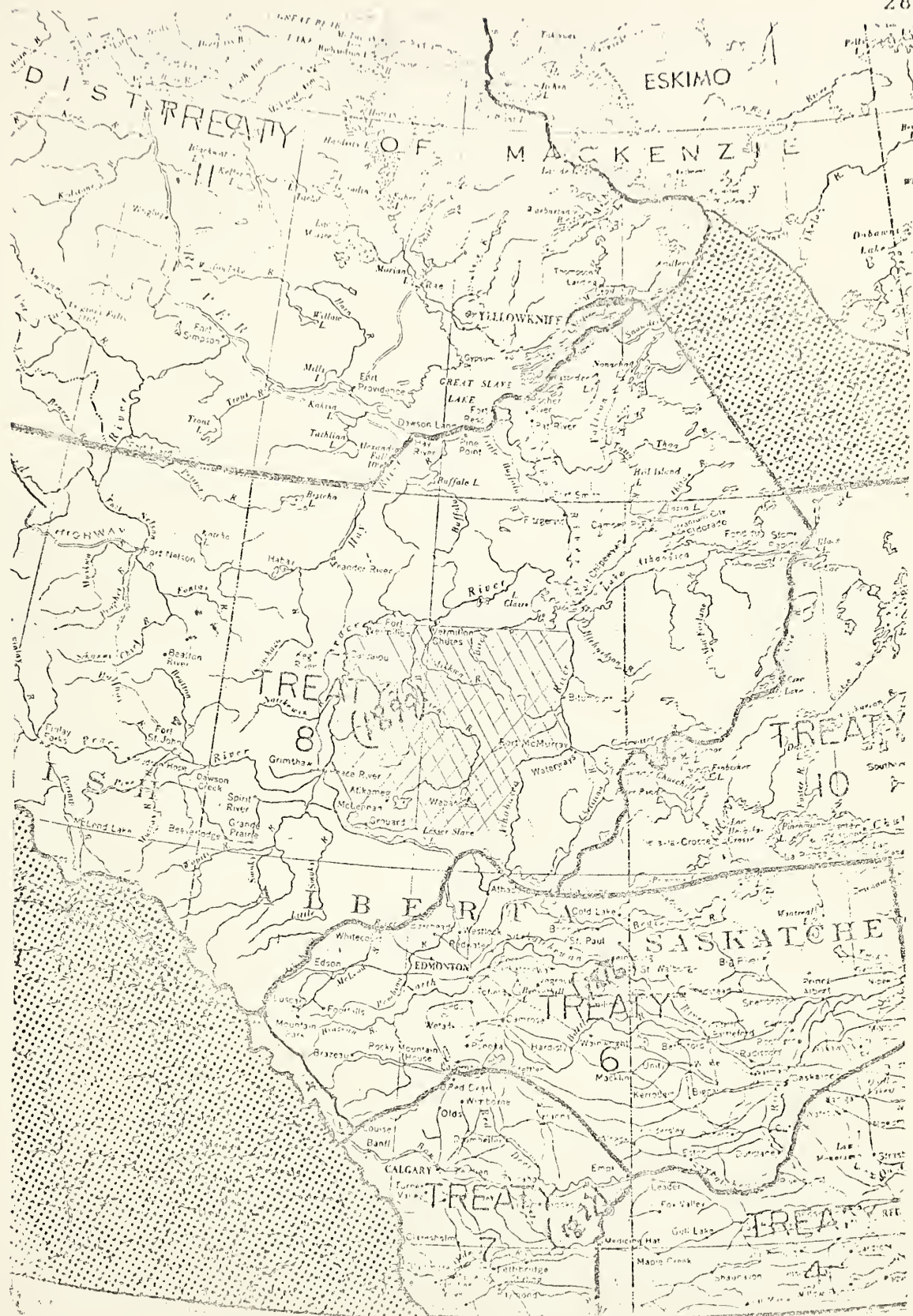
IN WITNESS WHEREOF the parties hereto have executed this agreement.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indian
Affairs & Northern Development.

THE INDIAN ASSOCIATION OF ALBERTA.

Handwritten signature

APPENDIX 9



NOTE: Caveat area is shaded on map.



APPENDIX 10

Headquarters Directors General
Regional Directors General

Ottawa, Ontario K1A 0H3
July 26, 1976

-- About a year ago the Department was asked by the Government to review the current relationship between the Government and the status Indians in the light of the Government's current responsibilities for them. The attached paper which is a product of that review has been approved by Cabinet. It proposes specific action to strengthen the relationship and improve the situation of the Indian people. It provides a broad framework in which to develop the Government-Indian relationship in future by shaping policies and programs jointly, and to rationalize and stimulate policies and activities that have been emerging in recent years.

This approach is based on the concept of Indian identity within Canadian society rather than a separation from Canadian society or assimilation into it. The concept envisages that there would continue to be recognition for Indian status, treaty rights and special privileges resulting from land claims settlement and that there would also be programs and services based on need because of the disadvantaged situation of many Indian communities and individuals.

The diversities of need, aspiration and attitude among Indians in all parts of Canada rule out a single strategy that would be universal and uniform in its application. Policy/program initiatives or responses to be applied in any given location or set of circumstances must derive from consultations with the Indian group directly affected and would involve agreement on objectives and shared responsibility for implementation at appropriate levels.

The emphasis of the approach is on processes of joint participation in policy/program developments with organized Indian leadership at all levels. In conveying to you this paper, I intend that you should be guided at all times by this approach, the various implications of which are summarized in the paper. The approach would also serve as a broad policy framework for all Federal departments and agencies having programs that affect status Indians, with heavy emphasis on systematic consultation among departments concerned both in Ottawa and in the field.

() / / /

Introduction

The principal means of concerting policies, programs and resources is to achieve an agreed policy approach. As the established authority and responsibility centre for status Indians, the Federal Government must assume part of the initiative in seeking to define the aims and shape of policies applied to Indian questions. Given the undertaking and need to consult with the Indian people concerned, this process of definition can best be accomplished through joint working arrangements with representatives of the Indian people, operating at various levels of contact. Through these arrangements the objectives, goals, priorities and methods for policy and programs alike can be worked out jointly and systematically, with emphasis on the acknowledged need for sensitivity and flexibility.

The underlying assumption of this approach is that some degree of Indian status will continue, certainly as long as it is perceived as needed both by the Government and by people recognized as "Indian" under Canadian law. The Government's relationship with the group recognized as status Indians is based on the concept of Indian identity within Canadian society rather than on separation from Canadian society or on assimilation into it.

Policy Framework

Indian identity within Canadian society is dynamic and flexible in its expression and evolution. It partakes of the Indian concept of citizen plus but both these concepts need to be given shape and dimension in policy terms. To begin with, neither concept implies a standard formula, set of criteria, or rules of universal and uniform application to all Indian groups in the country. The co-existence of Indian communities - within Indian society and in their relation to the larger Canadian society - that are markedly different in economic potential and social condition, is an inescapable fact at present and an inevitable likelihood in the foreseeable future. The main elements of Government-Indian relationship are illustrated on the following page.

The first three elements relate mainly to policy content and emphasis, taking particular account of Indian status. The second three embrace programs that apply generally to disadvantaged Canadians, including status Indians.

The listing of main elements (which is indicative and not exhaustive) suggests areas of choice for various Indian communities and implies a range of gradations to accommodate the diversities of situation in which Indian people find themselves. It envisages that there would continue to be recognition for Indian status, treaty rights and special privileges resulting from land claims settlements. There would also be programs and services based on need because of the disadvantaged situation of many Indian communities and individuals. Within Indian communities, based on the concept of band/reserve, the widest opportunity would exist for local self-determination and control of Indian affairs. It follows from all that has been said about flexibility and sensitivity, that every Indian band in Canada would not make the same choices -- some bands might prefer to remain remote, others to join in the regional milieu where they are located.

Strategy

- The diversities of need, aspiration and attitude among Indians in all parts of Canada rule out a single strategy that would be universal and uniform in its application.
- The strategy, must be sensitive and flexible enough to facilitate a policy/program initiative or response that meets circumstances found in a broad spectrum of Indian communities, categorized by economic and human potential.

Indian Identity
within
Canadian Society

Group
Continuity

- Full citizenship
- Indian Act status
- Treaty rights
- Special privileges
- Reserved lands
- Local government

Political
change

- Revised Indian Act
- NIB and affiliates funded
- NIB-Cabinet process
- Tripartite mechanisms
in provinces
- Enlarged band powers
- Access to media
- Representation in advisory
bodies

P
O
L
I
C
Y

Personal
Fulfillment

- Safeguards for Indian
languages and other
cultural values
- Indian group activities
under multicultural
program.
- Special assistance for
education/training
- Local self-determination
- Transitional services to
facilitate mobility
- Hunting/fishing safeguards

Social
Equity

- Social services on and
off reserves.
- Federally assisted
education
- Preference in employment
- Joint housing approach
with deep subsidy
- Assured access to
provincial programs and
services off-reserves

Enviro-
mental
Concerns

- Environmental protection
for Indian lands
- Involvement in environ-
mental protection and
planning
- Employment in national
parks, tourism, game
control.

P
R
O
G
R
A
M

Economic
Strength

- Reserve lands and other
band assets
- Proceeds from claims
settlement (package)
- Economic development
assistance
- Special counselling/
training
- Contract preferences
- Tax privileges for
reserve lands

- The strategy to be applied in any given location or set of circumstances must derive from consultations with the Indian group directly affected and would involve agreement on objectives, goal-setting and shared responsibility for implementation, at appropriate levels of relationship.

Processes

In the past two years, a system of joint working arrangements at various levels, involving the Government and representatives of status Indians, has been emerging. The institutions that are taking shape at each level need to be defined as to role and mandate, along the following lines:

- i) At the national level, the Joint NTB-Cabinet Committee has been established. As agreed, the Joint Committee should concern itself with major policy issues that emerge in the course of the Government-Indian relationship. These issues, which can be proposed by either side, constitute the agenda of the Joint Committee and become the subject of detailed consideration by Joint Working Groups established for that purpose. To expedite and facilitate the whole process, the Joint Committee has established (a) a Joint Sub-Committee of three Ministers and three Indian leaders, and (b) a Canadian Indian Rights Commission. In addition, there are joint working groups on specific subjects (e.g. housing, economic development) whose work so far has not required the consideration of the Joint Committee. The objective of the Joint Committee process is to enable the Government and Indian leaders to work cooperatively toward the betterment of the Indian people through joint deliberation at the policy level. (The relationships in the process are shown in Diagram 1, next page).
- ii) At the provincial level, tripartite arrangements do exist but in this area further thought, experimentation and action are needed to arrive at suitable arrangements to accommodate particular needs and situations in the various provinces. Involving representation from the Federal Government, the provincial government(s) concerned and the provincial association, their principal role is to give joint advice and assistance for policy/program implementation for bands in the various provinces. A key function would be to see that Federal/Provincial Programs, available to Indian people, dovetailed to ensure optimum effectiveness and avoid duplication and waste. The emphasis is more likely to be on broad guidance than on program delivery and an essential requirement would be the continuing consent of the Indian bands concerned to these arrangements and to the advice emanating from them. A joint study of program management in Saskatchewan now underway with the Federation of Saskatchewan Indians, is one example of explorations in this direction.
- iii) At the band level, the process of transferring programs and resources would continue to grow at a pace determined by the capability and desire of bands concerned to assume control of their own affairs, including program delivery. The enlargement of band powers to facilitate this process would continue to be a top priority in the consideration of revisions to the Indian Act, with sufficient permissiveness to allow application of specific sections of the Act to bands wishing and able to take advantage of them. DIAND advice and support to all bands would be consistent with their development potential, their requirement for assistance and their choice as regards relationship with DIAND (e.g. as hired or seconded band officials; as consultants; as regional or district administrators). Diagram 11, illustrates the transfer of responsibility to bands-

Other processes for consultation and negotiation are currently in place and they too significantly affect the relationship between the Government and the Indian people. The participation of the Treasury Board is considered essential whenever the consultations and negotiations referred to below occur on items that imply a disbursement of funds. For purposes of this paper they can be grouped in three main categories:

These are the discussions, and more specifically the actual negotiations, that are taking place in areas where traditional Indian interest in lands - deriving from historic occupancy and use - has been lost or interfered with without adequate compensation; and has not been the subject of any Treaty nor superseded by law. The approach to settlement is based on established Government policy that agreements should be negotiated with the Indian groups concerned and incorporated in Federal legislation. The areas concerned include lands in northern Quebec, the Yukon and Northwest Territories and British Columbia. In all these areas the provincial/territorial government is directly concerned with and involved in the negotiations because the settlements envisaged call for a package of proposals including various categories of Indian lands, cash compensation, resource revenue-sharing, and Indian participation in both economic development and local government.

ii) Processes for Settling Specific Claims

Widespread discussions have been held about another broad category of Indian claims, known as specific claims, which relate to such matters as residual land entitlement under Treaties, the interpretation and administration of the Indian Act, other alleged injustices in past dealings with Indian groups. The claims relate to the Government's commitment to discharge lawful obligations and some of them may require action in the courts (many are considered to be non-justiciable). A priority concern of the Joint NIB-Cabinet Committee is to ascertain whether principles and processes can be devised for settling specific claims through various other approaches such as arbitration, conciliation, negotiation; and a supportive Canadian Indian Rights Commission is being established. Since third-party interests are frequently involved and since these claims affect bands in most parts of the country, the claims and processes of settlement bear heavily on the relationship between Indians as a group and Canadian society.

iii) DIAND Consultations

There are a whole range of major items (housing, Indian education, economic development, Indian community affairs, off-reserve services) that are the subject of on-going consultation/negotiation at various levels of the relationship with status Indians. Such consultations in the past have tended to lack cohesion and rationale. It is mainly to achieve order and system in the evolution and administration of these major programs of DIAND that this Memorandum gives primary attention to the organization of the Indian/Government relationship at various levels and to refining the DIAND mandate to accord with needs and activities at those levels.

The DIAND mandate would continue to be re-shaped to serve the requirements of policy and strategy outlined in the preceding paragraphs. DIAND would serve as a source of ideas, initiatives and improvements in policies and programs, proposed from the Government side at appropriate levels. It would consult with departments and agencies concerned about the co-ordination of federal programs affecting Indians and those involving Federal-Provincial cooperation. It would provide information and other assistance to Indian groups advancing claims. It would discharge managerial responsibility on the Government side for the financial and administrative support required by policies, strategies and programs affecting the Government - Indian relationship.

Interdepartmental machinery at senior level is needed to coordinate the Federal effort to improve the relationship with the Indian people, along the lines indicated. The NIB-Cabinet process involves continuing participation of six to twelve Ministers whose responsibilities embrace programs of actual or potential benefit to the status Indians. Some of the Departments (but not all) are currently involved in the joint working groups already established under the NIB-Cabinet Committee (notably Justice,

Treasury Board, Secretary of State and DIAND); and in other consultations about particular projects such as housing (CHHC), economic development (DREE) and native employment (ENL, EEC). Additional joint working groups will be needed as the process extends to new areas of concern. The key to interdepartmental consultation and coordination of the policies and activities of departments and agencies with programs concerning Indians, may be to establish an interdepartmental committee, but for the moment interdepartmental working arrangements should be linked finally to the NIB-Cabinet process. The nucleus would be drawn from those departments whose Ministers are in regular attendance at meetings of the NIB-Cabinet Committee. Corresponding coordinative bodies will be needed at regional level as Government-Indian mechanisms evolve there.

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Sources of Funding

For carrying out Indian policies and programs, the following funding sources should be fully explored to see whether and how greater effectiveness can be achieved in the pursuit of jointly agreed objectives:

- i) Direct support for special programs and services, e.g. DIAND, NHW.
- ii) Resources available to Indians from programs of general application, both Federal and provincial.
- iii) Proceeds from claims settlement.
- iv) Indian land and other band assets.
- v) Core-funding of Indian associations and organizations including bands.

Greater benefits should result from systematic joint planning and cost-sharing arrangements of various kinds. As long as the Indian groups concerned were directly involved in the planning and broad management, through the various joint working arrangements, there is every reason to assume that greater program effectiveness would result. At the same time the relationship between the Government and the Indians would improve through this practice of cooperation.

Assessment of the Approach

The essence of this approach is joint participation at all levels of contact between Government and Indian representatives. It gives solid substance to the Government-Indian relationship in five significant ways:

- i) It affords a distinct and relevant role to Indian leaders within their own sphere of influence and competence; and at the same time enables Government managers to see more clearly and more fully appreciate their respective responsibilities, role and mandate in the course of dialogue and joint enterprise with Indian counterparts. The more representative the Indian leadership the more effective their contribution will be.
- ii) It affords real opportunities for exercising freedom of choice by the Indian leaders and groups directly affected by such choice. Choices exist on major questions at the national level in the consultative process under the NIB-Cabinet Committee process, even more apparently at band level in the face of clearly differing situations found there. All such choices would emerge from joint consideration of alternatives.
- iii) It promotes sensitivity and flexibility of response to needs and aspirations at the various levels; where objectives, goals, priorities and courses of action can be set by the leaders and in the areas directly affected. Their knowledge and experience of local situations, problems and people can be effectively blended with the know-how, advice and resources (including services) available from whatever government source.

- iv) It encourages and strengthens a sense of responsibility and accountability on both sides of the relationship; and an opportunity to refine that sense into solid and effective management practices.

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- v) It helps to give reality to the promise of participation, to build the self-confidence and self-reliance of Indian leaders at all levels, and generally to yield psychological benefits to the Indian people that could be as important to them as the substantive achievements flowing from the process.

Finally, it permits consensus to develop at all levels and at a pace consistent with perceived need. Through communication, and the evolution of policy at the higher levels, such consensus as may be reached at band level can be strengthened and broadened - accepting always that universality and uniformity in Indian affairs are probably no more desirable than they are attainable. At the same time, as the consensus evolves among Indians, it can spread among and within the ranks of Government representatives dealing with the Indians directly affected by it, at the various levels and from level to level.

Foreseeable disadvantages of the approach proposed are:

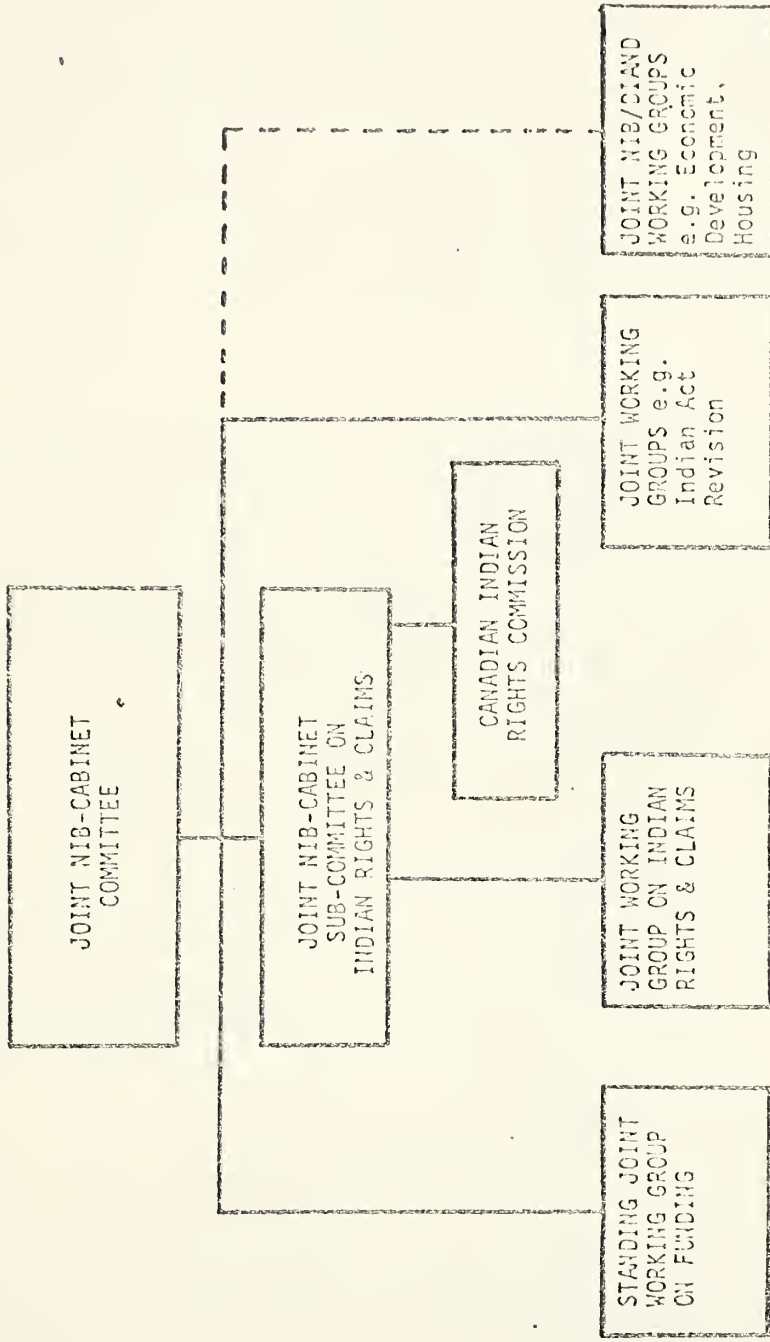
- It could lead to lengthy and diffused discussions resulting from a whole range of causes but principally perhaps because people on both sides were unfamiliar with the process, distrustful of it and certain participants, and generally skeptical.
- It could founder on rivalries that exist among Indian leaders and groups - and are not unknown in interdepartmental circles.
- It could degenerate into perfunctory meetings staged mainly for short-term political gains on both sides.
- It could, if a tight rein were not held firmly, lead to increasing demands for more money to mount bigger and better meetings.
- It could lead to expectations and demands from other native groups, notably Métis and non-status Indians, for corresponding treatment. In the case of the Inuit, their relationship and treatment in future is likely to be found in arrangements reached in the agreement on land claims settlements.

Financial Implications

The main thrusts of this approach do not call for any major new expenditures for programs affecting status Indians although it is recognized that additional costs may result from more vigorous consultation processes. The basic aim of the policy and strategy proposed is to get greater effectiveness from programs now in place through agreed commitment to program objectives, through more efficient application of resources, and through joint planning of programs for implementing agreed policies. This paper is prepared in full awareness of the galloping inflation in costs for Indian programs and of the continuing need for restraint in government spending.

Federal Government expenditures for Indian-oriented policy and programs are likely to be heavy for some time to come. Some indication of the magnitude is suggested by principal items: the Indian affairs budget; the major costs for claims settlements foreseen; Indian housing prospects including the needed catch-up during the next five years; the core-funding of the National Indian Brotherhood and affiliated associations; claims research funding and related claims activity. Other Federal departments and agencies also commit substantial resources to programs for natives, although the proportion devoted to status Indians cannot always be identified precisely.

JOINT NIB-CABINET COMMITTEE STRUCTURE



Water and Sewerage Administration

Summary of Capital Expenditures

1971-72 through 1976-77

Year	Total (\$millions)	Operating ↓	Capital ↓
71-72	244.9	30.7	4.2
72-73	260.2	39.2	18.3
73-74	322.4	57.0	15.4
74-75	374.0	74.0	22.8
75-76	Forecast 424.2	93.1	31.0
76-77	Forecast 468.0	117.0	40.5

The provinces are increasingly affected by Indian relationships with the Federal Government, and this has produced some strain between Federal and provincial authorities at senior levels. The main issues stem from land claims, including residual land entitlement under treaties.

The provincial tendency to portray status Indians as the sole responsibility of the Federal Government - for example in not fulfilling Canada Assistance Plan agreements - adds to the friction between the two levels of government. Some provincial policies and programs that directly affect the rights of status Indians and their lands have been pursued without consultation, or with only token consultation involving Indian representatives. There is, however, increasing recognition by provinces and acceptance by Indians, that provincial governments have a legitimate interest and share in dealing with Indian problems.

Public disturbance resulting from Indian unrest, office occupation and other obstructions have been a further source of irritation in Federal-Provincial relations, e.g. Kenora. Some provincial governments have been slow to recognize that their stake in achieving peaceful relationships with Indian groups ranks with that of the Federal Government.

The same kind of situation prevails in both the Yukon and Northwest Territories with effects that are more acute. Ethnic tensions are running high in both Territories, mainly because of land claims and associated assertions about native rights. The problems of relationship are made more complex and potentially more serious than those in the South because native people form a much higher proportion of the population than in any other part of Canada - in the Northwest Territories the Indian, Inuit and Métis people outnumber the white population at the present time. Conscious of this unique situation, the native associations in both Territories are seeking special arrangements and institutions for local government that will serve to entrench their position. The Inuit land claim calls for the creation of a new territory North of the tree-line, with important federal-territorial implications that need only be flagged here.

Conclusions

In many ways this paper is a summary statement of conclusions about the Government-Indian relationship: about what it is at the present time; about where it appears to be heading; and about how it can be developed in future. Some of these conclusions are quite solidly based in experiences of the past five years, others are tentative, even debatable. A conscious effort has been made to present them in a way that emphasizes their significance in relation to each other and in terms of their possible impact on the relationship in future.

It is no accident that the emphasis in the approach is on processes. To begin with, it is abundantly clear that in the practical workings of this difficult relationship, involving two societies deeply divided by cultural differences and a long history of conflict, process can be very important, perhaps paramount. If the paternalism of the past is to give way to real partnership, requiring full commitment and cooperation from all its participants, the Indians must be satisfied above all that they are participating with some sense of equality.

The road to their self-reliance lies somewhere along those processes of joint participation, now being practised, proposed and explored in depth. It is a learning process for all concerned and one that may have lessons for wider application in contemporary government.

It follows that most of the substantive policy (and ultimately program) developments lie beneath the surface of the large and uneven profile of the Government-Indian relationship. They can and must be uncovered through joint exploration and experiment at the various levels of contact and communication.

These processes of participation are modular not hierarchical, decentralized rather than uniform, top-down and bottom-up at the same time and in different ways. This paper seeks to show how they all relate, without trying to draw them too tightly together, with what could only be premature and probably counter-productive prejudgments.

This paper begins as a response to a government request for a composite report on the relationship. It is intended as well to assist individual Departments in assessing the Government's and their own responsibility, role and contribution for improving the situation of Indian citizens within Canadian society. It is the foundation for future policy and program adjustments, affecting that situation and the Government-Indian relationship. It is neither a blueprint nor a prophecy for success. But it is an honest effort to get greater effectiveness out of tight resources, through processes of working with, rather than against, organized Indian leadership, wherever it is located.

APPENDIX 11

23 JUN 1977

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The Honourable Lou Hyndman,
Minister of Federal and
Intergovernmental Affairs,
Province of Alberta,
323 Legislative Building,
Edmonton, Alberta
T5K 2B6

I am writing in reference to your previously acknowledged letter of April 27, regarding the fulfillment of outstanding land entitlements for Indian bands under treaty in Alberta.

Prior to commenting specifically on the position set out in your letter, I should like to outline for you my government's views respecting the fulfillment of outstanding land entitlements. As you may know, it is our stated policy to fulfill our obligations flowing from Indian legislation and historical treaties with the Indian people. In so doing, we are also aware of the important role which the meeting of outstanding obligations can play in guaranteeing the future socio-economic viability of the Indian people within the larger Canadian society.

However, in meeting our responsibility to provide Indian bands in Alberta, Saskatchewan and Manitoba with their land entitlement pursuant to treaties, the federal government is bound by the Natural Resources Transfer Acts which require agreement between a designated provincial Minister and myself as to the selection of lands. In undertaking such action, I would hope that we could meet the concerns of all parties involved, particularly those of the Indian people.

In this context, I would refer you to the proposal recently put forward to the Federal Government by the Province of Saskatchewan respecting the settlement of outstanding land entitlement pursuant to treaty. Arrived at in consultation with the Federation of Saskatchewan Indians, the Saskatchewan proposal puts forward a formula for calculating outstanding entitlement utilizing present population figures for a band affected, times the per capita acreage as set out in the

applicable treaty. In cases where Bands have received some land, the area already allocated is subtracted from the above total. In Saskatchewan the population figure has been fixed as of December 31, 1976; beyond that date entitlement will not grow.

My Cabinet colleagues and I have been encouraged by the Saskatchewan proposal and were pleased to approve it. In our view it provides a basis for finally resolving the remaining obligations to provide land under treaty in a way that meets the needs of Indian Bands concerned. In light of the Saskatchewan proposal we would like to discuss with you the possibility of reaching a settlement of all outstanding treaty land entitlements in Alberta. In suggesting such exploratory discussions with your government, I am not unmindful of settlements made in 1960 with two Alberta bands on the same basis as that currently put forward by Saskatchewan. Specifically, I refer to settlements for the Little Red River and Slaves of the Upper Hay Bands. It is my understanding that the outstanding entitlement of these groups was calculated by utilizing the contemporary population of 1955; this was the date that agreement was reached between Alberta and Canada concerning the provision of land for these groups.

In view of the above, your letter of April 27 has caused me considerable concern. Firstly, I find untenable your government's stated intention to fix treaty entitlements on the basis of band population at the time of treaty. I would suggest that such a position is excessively restrictive and overlooks entirely the benefits to be gained from providing Indian citizens of Alberta with a land base commensurate with their needs.

Secondly, it has always been understood that upon transfer of lands to Canada for Indian reserve purposes, mines and minerals, and other subsurface rights would be and have been included in the transfer. The Natural Resources Transfer Act does not derogate from this position, for it states that all lands conveyed under Section 10 "shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof". You will also note that Section 11, incorporating by reference certain provisions of a 1924 Indian Lands Agreement between Canada and Ontario, deals with the disposition by Canada of moneys derived from mineral developments on Indian reserves. This section could have no effect were the mines and minerals not included in lands returned to Canada for Indian reserve purposes.

Finally, I find difficult to understand and cannot accept that your position on the above mentioned subjects should be applied to the provisions of Lands for the Cree Band at Fort Chipewyan. That position as currently stated seems to be in direct

contradiction with principles for settlement accepted by the Province of Alberta in the cases of the Little Bow River and Slaves of the Upper Bands, and repeated in a more recent commitment made two years ago by your predecessor, the Honourable Don R. Getty with respect to the Cree Band. You may recall that in letters to the Honourable Judd Buchanan, and to Harold Cardinal, then President of the Indian Association of Alberta, dated February 26, 1975, Mr. Getty stated Alberta's willingness to cooperate fully in the establishment of reserves at Embarras Portage and Peace Point, and did not question the total amount that would be set aside. Therefore, there can be no doubt that the entitlement of the Cree Band at that date was recognized by all parties to be 97,280 acres. Some 42,000 acres were to be selected at the two sites in Wood Buffalo National Park, the balance was to be selected from the Crown lands of the Province. Your present proposal would give the band an entitlement far less than that previously agreed upon by both governments and considerably less than the lands already surveyed and approved by the Band.

I do appreciate the nomination of the Honourable D. W. Schmidt as Minister responsible for treaty land transfers. However, in view of the lack of accord which your correspondence suggests exists between us, I believe it would be more helpful at this time if I met with you and those of your Cabinet Colleagues who participated in formulating the position which your letter outlines. Such a meeting would facilitate a frank and comprehensive exchange of views on this subject, and could, I would hope, lead to a basis for resolving some of our current differences. I am prepared to meet with you and your colleagues at your earliest convenience, and have asked Mr. David Tobin, my Executive Assistant, to arrange with your office for a mutually satisfactory time for such a discussion.

Yours sincerely,

ORIGINAL SIGNED BY
ORIGINAL SIGNED PAR
Warren Allmand

Warren Allmand.

FEDERAL AND
INTERGOVERNMENTAL AFFAIRS

403/427-2325
304

Office of
the Minister

323 Legislative Building
Edmonton, Alberta, Canada
T5K 2Z3

April 27, 1977

Honourable W. Allmand
Minister
Department of Indian Affairs
and Northern Development
Centennial Tower
400 Laurier Ave., West
Ottawa, Ontario K1A 0H4

Dear Mr. Allmand:

Further to your letter of December 22, 1976, to the Attorney General of Alberta wherein your government requested assistance to accommodate an outstanding land entitlement for the Chip Cree Band, and in anticipation of requests to accommodate entitlements for other Bands in Alberta, the Government of the Province of Alberta has examined the broad question of its relationship to the issue of Indian Land Entitlements. As it is our wish that this issue be handled in a most equitable and expeditious manner, we wish to indicate to you our position under the terms of the 1930 Natural Resources Transfer Agreement, which transferred the ownership, administration and control of public lands to the Province of Alberta.

1. The Government of Alberta is prepared, upon request, to accommodate the transfer of the administration and control of unoccupied Crown lands to the Government of Canada for fulfillment of obligations under the relevant Treaties. These land entitlements will be calculated on the basis of the Band population as counted at the time of Treaty signing times 128 acres per band member as provided in the Treaty. In such a transfer, all rights to mines and minerals would be retained by the Province of Alberta.
2. The Honourable D.W. Schmidt, Associate Minister of Energy and Natural Resources, is authorized by the Public Lands Act to oversee the disposition of public lands in Alberta and he would be the "appropriate Minister of the Province", as indicated in Section 10 of the Natural Resources Transfer Agreement.

Honourable W. Allard

- 2 -

April 27, 1977

I am sure you share our concern that the land obligation that Canada has under the terms of the Treaties be met in short order, especially in the outstanding Chip Cree and Tall Cree Bands. If you would advise me at your earliest convenience as to the amount and proposed location of the lands involved, my officials would then be happy to meet with representatives from your department to discuss this matter further.

Yours sincerely,

LDH/pdd

cc: Honourable Jim Foster
Honourable Bob Bogle
Honourable Dallas Schmidt

OTTAWA, Ontario K1A 0H4

The Honourable J. Foster,
Attorney-General,
Province of Alberta,
Room 404,
Legislative Building,
EDMONTON, Alberta T5K 2E8

Dear Mr. Foster:

I am informed that the responsibility for effecting a transfer of two parcels of land within Wood Buffalo National Park to Canada to be set apart for the use and benefit of the Cree Band of Fort Chipewyan now lies with your Department.

This transfer, as it has been discussed, would be conditional upon the two parcels being withdrawn from the operation of the National Parks Act, at which time the administration and control would automatically revert to Alberta pursuant to Section 14 of the Transfer of Resources Agreement.

As you may be aware, an agreement was made with the band in April of 1973 that its land entitlement under Treaty No. 8 would be fixed at 97,280. To date, the band has selected some 42,000 acres within the boundaries of Wood Buffalo National Park at two sites known as Peace Point and Embarras Portage. This selection was approved by my predecessor, Mr. Chrétien, and the sites have since been surveyed to the satisfaction of the band. Legal descriptions and survey plans were forwarded to provincial officials in June of this year.

The Honourable Mr. Getty, then Minister of Federal and Intergovernmental Affairs, wrote to my predecessor on February 26, 1975, giving assurance that the Government of Alberta would cooperate fully in implementing the necessary land transfer to allow the establishment of reserves for the Chipewyan Cree at Peace Point and Embarras Portage. I am now writing to request your cooperation in giving effect to this commitment.

The Cree Band is understandably dismayed by the lengthy delay in setting apart the reserves they have selected and, while there have been understandable problems with surveys and descriptions attendant upon a unique transaction, I do not believe any further delay can be supported.

As soon as Alberta conveys its reversionary interest in the selected lands to Canada I will approach the Governor General in Council for an order of acceptance that will set the selected areas apart as Indian Reserves under the Indian Act. Naturally this will take effect only upon the passing of the proposed amendment to the description of Wood Buffalo National Park in the National Parks Act. As you can see, it is desirable that the two Orders take place before the Amendment, and I seek your assistance in expediting this action.

I would hope, then, that we can advance the resolution of this relatively straightforward transaction and proceed to the general and more complex question of residual treaty entitlements within Alberta.

May I thank you in advance for your attention to this problem.

Yours sincerely,

Original Signed by

Original Signer for

Warren Allmand

Warren Allmand.

c.c. Hon. Peter Longheed
Hon. Lou Hyndman
Mr. Harold Cardinal
Mr. Robert Young
Chief Archie Wagnan

APPENDIX 12

INDIAN ASSOCIATION OF ALBERTA

ROOM 203, KINGSWAY COURT — 11710 KINGSWAY AVENUE
EDMONTON, ALBERTA, T5G 0X5

January 18, 1974

Mr. Richard Price,
Director,
Treaty and Aboriginal Rights Research,
11710 Kingsway Avenue, Room 103,
EDMONTON, Alberta.

Dear Richard:

I have read your memorandum of January 10, 1974 and have the following comments to make in this regard.

I have taken note of your research project "Government Integration and Indian Reactions" at the University of Alberta and I wish to give you written permission to complete this project after termination of your work with us. I understand that you began work on this project considerably before your full-time employment with the Indian Association of Alberta and therefore this consideration has been given. Further, in light of the fact, that the copyrights for this research project are to remain with the Indian Association of Alberta, you are authorized to use, with appropriate discretion for the rights of treaty Indians, certain relevant information obtained during your employment with us.

Yours very truly,

University of Alberta Library



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